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REVIEW CONFERENCE ON THE UNITED NATIONS CONVENTION
ON A CODE OF CONDUCT FOR LINER CONFERENCES

REPORT OF THE REVIEW CONFERENCE ON THE UNITED NATIONS CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES ON ITS RESUMED SESSION

held at the Palais des Nations, Geneva,
from 21 May to 7 June 1991

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INTRODUCTION

1. The resumed session of the Review Conference on the United Nations Convention on a Code of Conduct for Liner Conferences, convened pursuant to article 52, paragraph 1, of the Convention and to resolution I adopted by the Review Conference on 18 November 1988, was held at the Palais des Nations, Geneva, from 21 May to 7 June 1991. 1/

2. In his opening address, Mr. L.M.S. Rajwar (India), President of the Conference, noted the positive contribution made by all regional groups and China to achieve a solution on the rules of procedure for the Review Conference. He also thanked the UNCTAD secretariat for its assistance with the consultations.

3. He pointed out that, despite the many changes that had occurred since the adoption of the Liner Code in 1974, the universal character of the Convention had remained because the Code enshrined certain basic values and principles that made it attractive to many countries. To date - i.e. May 1991 - 75 States had acceded to or ratified the Convention.

4. He urged the Review Conference to recognize several technological and structural changes which had taken place in the liner shipping industry. For example, technological changes in containerization and multimodal transport would require that the Code be especially adapted to embrace these changes. Among the structural changes that had occurred, he stressed the significant expansion of non-conference shipping operators and the emerging trend of more cooperation between conference and non-conference shipping operators to promote greater market stability.

5. Referring to the agenda of the Review Conference, he focused on two items that might dominate the proceedings of the Conference. These were the role of non-conference operators and the nature of the instrument that might emerge from the Conference. For the former - non-conference operators - he observed that a number of documents should be considered, including those submitted for the resumed session. The Review Conference was especially invited to consider carefully the resolution on non-conference shipping lines adopted in April 1974, for what it said and for what it left unsaid, and the statement on this subject made by the spokesman for the Group of 77 (India) at the United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences in 1974. For the latter (the instrument), he expressed the opinion that the Conference should adopt a pragmatic and flexible approach and be guided by the three basic principles enshrined in the preamble of the Convention. These were: (a) the improvement of the liner conferences system; (b) the need for a universally acceptable code of conduct for liner conferences; and (c) the special needs and problems of developing countries.

6. The Secretary-General of UNCTAD in his opening statement emphasized that the flexibility and goodwill shown by all regional groups and China had led to a compromise solution on the rules of procedure and to the reconvening of the Review Conference. He expressed appreciation for the efforts made by representatives of the permanent missions in Geneva who had worked intensively

over a period of seven months to formulate the original compromise package. He also thanked the shipping coordinators of the regional groups (supported by representatives from capitals) and China.

7. Commenting on the status of the Code, he observed that five additional States had become Contracting Parties to the Convention after the November 1988 session of the Review Conference. This fact, in his opinion, reconfirmed the continued validity of the Code. He also stated that the report by the UNCTAD secretariat entitled "Issues for the Review Conference" (TD/CODE.2/4), originally prepared for the November 1988 session of the Review Conference, remained the basis for the work of the resumed session of the Conference.

8. He observed that various technological and structural developments in liner shipping continued to pose challenges to developing countries. These included merchant fleet development and the manner and extent of its participation in world liner shipping. Referring to recent positive developments in liner shipping that were related to the work of the Review Conference, he noted a trend towards increased cooperation between liner conferences and non-conference operators on major liner shipping routes. This cooperation was intended to mitigate problems of overcapacity, freight rate instability and destructive competition in liner trades. The resumed session might wish to examine the usefulness of this type of cooperation in addressing the concerns of developing countries with regard to the impact on their national shipping lines of persistent overtonnaging of their liner trades.

9. Turning to the expected outcome of the Conference, he noted that the agenda provided for the adoption of amendments, flexible guidelines, recommendations and resolutions. When making a choice of instrument, due regard should be paid to the nature of the issues considered at the Conference. In addition, the Conference needed to find solutions to the many problems which were not purely legal - for example, common understanding of guidelines for interpretation and implementation of the provisions of the Convention, and issues relating to non-conference lines. This would enable the Conference to address the specific problems of particular liner trades or of particular regions or subregions, without introducing unnecessary rigidities into the provisions of the Convention.

10. Finally, he recalled that, while the Convention provided a framework for the regulation of liner conferences and their relations with shippers, shippers' organizations and Governments, the Convention from its outset had been seen as an instrument that could help developing countries to build up their merchant fleets and to participate effectively in international liner shipping. It was essential that this consideration should guide the work of the Conference in solving problems that had been encountered in the implementation of the Convention.

Tribute to the memory of Mr. Rajiv Gandhi

11. At its 9th plenary meeting, on 23 May 1991, the Review Conference on the United Nations Convention on a Code of Conduct for Liner Conferences observed a minute of silence to pay tribute to the memory of Mr. Rajiv Gandhi, former Prime Minister of the Republic of India, who died on 21 May 1991.

Chapter I

GENERAL REVIEW OF THE IMPLEMENTATION AND THE WORKING OF THE CONVENTION

(Agenda item 8)

12. For its consideration of agenda item 8, the Review Conference had before it the following documents:

"Views of Governments on the Review Conference" - prepared by the UNCTAD secretariat (TD/CODE.2/3 and Add.1)

"Issues for the Review Conference" - report by the UNCTAD secretariat (TD/CODE.2/4).

13. The spokesman for Group B (Netherlands) stated that the basic approach of his Group to a review of the Convention on a Code of Conduct for Liner Conferences had been adequately reflected in the records of the November 1988 session of the Review Conference. The thinking of his Group on the substantive key points had not changed.

14. He suggested that, at its resumed session, the Review Conference should focus its work on reviewing the working and implementation of the Convention and preserving the Code's inherent key elements of flexibility and self-regulation. This approach did not exclude making the necessary technical amendments to the Code which could eliminate shortcomings of the Convention in its working and implementation. At the same time, he stated that Group B would not consider any extension of the current scope of application of the Code nor any attempt to regulate non-conference shipping lines operating on a commercial basis.

15. He noted that the situation in liner shipping had changed significantly since the adoption of the Convention in 1974. At that time most liner trades had been conventional, but now most of them were containerized. Also, not all countries were in a position to participate in liner shipping in efficient and remunerative liner conference trades. In view of the above, he suggested that the Review Conference might wish to explore ways and means of encouraging the formation of consortia in liner conference trades and the promotion of joint ventures as ways of achieving equal and economic participation by all trading partners in liner conference trades and in promoting rationalization of the trade and to protect national shipping industries from the effect of technological evolution. Similarly, pooling of cargoes in conference trades might be examined. The outcome of the discussions might result in certain technical adjustments.

16. He could understand the wish of any country to participate in liner shipping operations, either directly or indirectly. However, he emphasized that such participation should not lead any country to offer its participation rights for sale.

17. He recalled that the provisions of the Convention should apply only to maritime pier-to-pier transport services and stated that Group B opposed the extension of the Convention to multimodal transport operations as such an extension would create problems for conferences in fulfilling their obligations under the Convention.

18. He insisted on the need to safeguard the Code's inherent principles of flexibility and self-regulation. Moreover, he felt that it would be regrettable if changes to the present Convention were incompatible with existing international law as well as various national legislations - in particular in respect of competition and anti-trust philosophies - and thus possibly forced Contracting Parties to consider entering new reservations or to renounce their adherence to the Convention.

19. As the Convention was based to a large extent on self-regulation by commercial parties, he pointed out that the role of Governments should be limited to maintaining a liberalized shipping market and providing minimum regulatory measures for liner conferences.

20. Finally he suggested that the Review Conference might wish to examine the provisions regarding mandatory conciliation and the need to make these provisions of the Convention more compatible with current commercial needs and practices.

21. The representative of China expressed the hope that the Review Conference could reach universally acceptable agreements in a spirit of consensus and mutual understanding. He recalled that his country had become a party to the Convention on the Code of Conduct for Liner Conferences in 1980. Since then, the objectives and principles stipulated in the Convention had been implemented by the Chinese authorities and companies in providing shipping services. With the implementation of policies of reform and opening up to the outside world and the steady expansion of its foreign trade, China's foreign trade shipping market was also opening its doors. All domestic and foreign shipping companies could carry China's import and export goods in accordance with the shipping clause of international trade contracts.

22. He felt strongly that the Convention continued to play a positive role in fostering an orderly development of the world shipping industry through promotion of reliable liner services and safeguarding the interests of shipowners and shippers. However, recent technological and structural changes in liner shipping were causing certain problems for the implementation of the Convention. He therefore expected that the Convention could play a greater role through the review of the working and implementation of the Convention at the Review Conference.

23. The representative of the European Economic Community (EEC) said that the Convention on a Code of Conduct for Liner Conferences had considerable significance for the Community and its member States. He stated that two more member States had ratified the Convention since the Review Conference held in November 1988. Thus, in May 1991, eight EEC member States were now Contracting Parties to the Code.

24. Recalling that the conditions for ratification of the Code by the EEC member States were contained in the "Brussels Package" of 1979, he emphasized that liner conferences had to operate in an open trade in which non-conference lines must be free to compete in accordance with the resolution adopted by the Conference of Plenipotentiaries in 1974. The EEC was opposed to a regulation of the whole liner trade and the extension of the scope of application of the Code to the inland transport services provided by conference lines. He also recalled that, if competition in a liner trade were eliminated, the conference would no longer qualify for the bloc exemption under the Community's competition rules.

25. Turning to the problems encountered by developing countries in the field of liner shipping, he proposed that joint solutions be sought for such problems, with the Code as such remaining the point of reference and on the understanding that it could only work in open trades. He hoped that the discussions in the Review Conference on the working and implementation of the Code would have a positive effect on the universal acceptance of the Code and would help to improve the liner conference system, while allowing for proper attention to be paid to the special needs and problems of developing countries.

26. The spokesman for the Group of 77 (Côte d'Ivoire) expressed satisfaction at the acceptance of the revised rules of procedure by the Review Conference. He noted, however, that the statement of Group B as reported in TD/CODE.2/9 appeared, at least on certain points, to be in contradiction with the "Gentleman's Agreement", which was an integral part of the compromise package.

27. The Group of 77 felt strongly that the Conference should examine the reasons for limited implementation of the Convention as well as for the unsatisfactory working of some of its provisions. He urged the Conference to take into account problems faced by most developing countries in increasing or even maintaining their level of participation in world shipping and to put into action the generally accepted principles and objectives contained in the Convention which aimed at improving developing countries' involvement in world shipping.

28. Referring to structural and technological changes in liner shipping, he requested the Conference to adapt the Convention to the current situation through adoption of necessary amendments. He suggested that the Convention should include provisions recognizing the rights of national shipping lines of countries of origin and final destination of cargo to carry an appropriate share of transshipped cargo. Moreover, national shipping lines of developing countries operating space chartering services and issuing their own bills of lading should be recognized as having the status of vessel-operating-carrier for the purposes of the Convention.

29. To improve the working of the Convention, he suggested that relevant aspects of international multimodal transport services provided within the framework of liner conferences should be included within the scope of application of the Code. He insisted that consortia of shipping lines conforming to the Code definition of liner conferences operating outside traditional conferences should fall within the scope of the Code. Even such

consortia which did not conform to a uniform freight tariff should fall within the scope of the Code since they indirectly controlled freight rates through controlling capacity.

30. The Group of 77 believed that the cargo-sharing provisions of the Code were applicable to entire liner trades. The Conference should recognize the sovereign rights of States to control and, to a certain extent, regulate the activities of non-conference lines and to use bilateral agreements to ensure equitable cargo sharing. The Group of 77 believed that the Convention must provide real opportunities for developing countries to increase their participation in world shipping primarily by ensuring better access to cargoes and, similarly, to expand their merchant fleets on an economically viable basis. He felt that the extension of the principle of cargo sharing to other types of cargo would promote more just international maritime relations. Also, the expansion of the Code would allow developing countries to reduce, at least partly, the existing technological gap between themselves and developed countries and would increase their overall participation in merchant shipping.

31. He observed that, in becoming a Contracting Party to the Convention, any State might make reservations provided that such reservations were compatible with the objectives and principles of the Code. Moreover, his Group was opposed to the common reservations made by the EEC member States. He characterized the EEC common reservations as discriminatory and believed they could frustrate the objectives of the Code. In particular, the EEC definition of a national shipping line, which went beyond the Code definition, could be a source of major problems.

32. He expressed the view that Governments should play a more active role in the implementation of the Code, especially through monitoring of the implementation of Code provisions by liner conferences and regular shipping lines and by administering cargo-sharing schemes. Finally, he said that, in addition to the Code, agreements on other instruments must be envisaged to consolidate the foundations of the new maritime order on the basis of equitable relationships and mutual cooperation.

33. The representative of the Union of Soviet Socialist Republics reconfirmed his country's support for the Convention on a Code of Conduct for Liner Conferences aimed at improving the liner conference system and said that Soviet shipowners followed strictly the provisions of the Code in trades where the Code applied. In view of this, he supported the idea that the Convention should not contain unnecessary rigidities and expressed the opinion that the abiding character of the objectives and principles of the Code should be retained.

34. Referring to the agenda of the Review Conference, he said that non-conference lines were one of the most important issues, which could not be solved through adoption of unilateral legislation aimed at protecting the interests of national shipowners. He noted also that the term "fair competition on a commercial basis" (cf. para. 2 of resolution 2 adopted by the Conference of Plenipotentiaries in 1974) should be defined by the international shipping community and proposed that the Review Conference might wish to recommend that the UNCTAD Committee on Shipping convene an intergovernmental group to define the term.

35. He was opposed to any extension of the scope of application of the Code to non-conference carriers and noted that reservations should not undermine the objectives of the Convention. Furthermore, the role of Governments in implementing the Convention should be limited by relevant provisions of the Convention as well as of the annex to its resolution 1 and they should not intervene in the allocation of market shares among conference lines serving their foreign trade.

36. Finally he noted that the Convention provided opportunities for development of regional and subregional cooperation in liner shipping. However, this cooperation should not lead to deviations from the Convention, for example to increasing State intervention in the activities of liner conferences at regional or subregional levels.

37. The representative of Kenya stated that his country had acceded to the Convention on a Code of Conduct for Liner Conferences in 1978 and had codified the Convention into Kenyan Law in March 1989. Thus the provisions of the Convention had been implemented by Kenya for more than two years. However, the action of certain Governments and regional economic groups was hampering equal participation of national shipowners in the carriage of Kenya's seaborne trade, which was of critical importance for the country's economy. He added that Kenya was not in a position to realize its economic growth without effective management of its maritime services and expressed the belief that the scope of application of the Code should cover not only the conference trade but the whole liner traffic. He suggested that the Review Conference should consider this question and prescribe appropriate modalities for its effective implementation.

38. The representative of Argentina, expressing support for the statement made by the spokesman for the Group of 77, clarified the position of his country on certain issues raised during the Review Conference. Argentina believed that the non-conference lines should have the freedom to provide their services alongside the liner conferences in order to assure the quality of liner services. Competition from non-conference lines would limit the privileged position of liner conferences and would lead to a lowering of freight rates in Argentina's seaborne trade.

39. He considered that the expansion of the scope of the Code to cover the transportation of bulk cargoes was a very sensitive issue on which initiatives were not desirable in the present circumstances. On the whole, the Review Conference should adopt necessary guidelines or agreements relating to the implementation of the Code, including consultations and cooperation among different operators in liner trade covering such questions as excess capacity or establishment of services, without seeking necessarily to amend the Code.

40. The representative of the Republic of Korea noted that structural and technological changes in liner shipping had been hampering many developing countries in their attempts to increase their participation in world liner shipping. He felt that the Review Conference should consider the implications of these changes for the implementation of the Convention on the Code of Conduct for Liner Conferences. Since the activities of non-conference lines

had significant implications for the Liner Code, he also suggested that the Review Conference might wish to consider the activities of non-conference lines.

41. He believed that the shipping industry could best serve world trade when it had the freedom to provide the necessary services. In his opinion, too much government regulation would raise shipping costs and reduce the availability of shipping services. He suggested that the progress of the Uruguay Round negotiations in services, especially in the shipping sector, should be taken into consideration by the Review Conference.

42. Referring to the scope of application of the Convention, he expressed the view that it was not appropriate for the Review Conference to discuss the expansion of the provisions of the Code to the non-liners, which should continue to operate on the basis of free competition.

43. The representative of the International Federation of Freight Forwarders Associations (FIATA) pointed to the importance of a review of the Convention on a Code of Conduct for Liner Conferences in view of recent developments in international liner shipping. However, it would be premature to effect any radical changes in the nature of the Code at the moment. He recommended that changes to the Code should aim at securing clarification of its provisions rather than fundamental revisions. In this connection, he suggested that the Review Conference might wish to clarify certain definitions and proposed a number of amendments to the text of the Convention. In particular, he suggested a revision of the definition of "shipper" in the Code to include a freight forwarder acting in his own right as an intermodal operator or consolidator within the definition in order to entitle such a freight forwarder to participate in consultations with liner conferences on behalf of his client base. Finally, he expressed the view that inclusion of non-conference carriers and non-vessel-operating common carriers within the scope of application of the Code was unreasonable and any suggestion in this respect should be rejected. He was also opposed to cargo reservation schemes applied by certain countries which were abrogating the Code unilaterally and restricting the free choice of carrier and free competition.

44. The representative of the International Chamber of Commerce (ICC) recalled that the Convention on a Code of Conduct for Liner Conferences had been the result of compromises between different views. Thus, the Review Conference should maintain the status quo of the Code by preserving the main principles of self-regulation and flexibility. He expressed the view that the Code should apply only to liner conference services between contracting States. Similarly, member lines of non-codist countries should not be subject to discrimination in any form. In this connection he opposed any extension of the regulatory régime to non-conference lines.

45. He highlighted the importance of liner conferences operating commercially with a minimum of governmental intervention and oversight. Liner conference activities should be left to the competence of conference member lines and shippers' organizations.

46. Finally, he emphasized the need for proper implementation of the Code in accordance with its provisions and expressed the opinion that the increasing involvement of developing countries in world shipping could be achieved through the development of cooperation in the shipping industry based on commercial principles.

47. The representative of the Board of the Cartagena Agreement (JUNAC) stated that the member countries of the Andean Pact were going through a period of major changes in their economies. The Andean Presidential Council had adopted a set of decisions to orient the economies of these countries towards a more competitive and export-oriented system. In connection with the Review Conference's discussions on the Code of Conduct, he drew attention to decisions taken recently by the Andean Presidential Council, in particular the decision regarding the adoption of a policy for the elimination of cargo reservations within the subregion and vis-à-vis third countries. The economic changes occurring in the Andean Pact countries were far-reaching and it would be useful for the Review Conference to take account of those changes in discussing possible modifications in the Code of Conduct. International shipping policies should be in line with the new orientations now being pursued in the countries of the Andean Pact.

Chapter II

REPORTS OF THE MAIN COMMITTEES ON AGENDA ITEMS 9, 10 AND 11

Report of the First Committee 2/

CONSIDERATION OF SPECIFIC ISSUES RELATING TO THE CONVENTION AND ITS IMPLEMENTATION

(Agenda item 9)

A. Scope of application of the Convention

(Agenda item 9 (b))

48. The Director of the Shipping Division, referring to TD/CODE.2/4, said that the main issues relating to scope of application were: (i) the applicability of the Code of Conduct to liner conferences; (ii) the applicability of the Code to entire liner trades; (iii) government-controlled and defence cargoes; (iv) the applicability of the Code to shipping services covered by bilateral shipping agreements; and (v) the applicability of the Code to international multimodal transport services provided by conference lines.

49. The spokesman for Group B (Netherlands) said that, in accordance with article 52, paragraph 1, of the Convention and the Gentleman's Agreement contained in the appendix to TD/CODE.2/2/Rev.1, the Review Conference should concentrate on the working and implementation of the Convention. He emphasized that the scope and the principles and objectives of the Code should remain unchanged, and that the Code should apply to liner conferences only, as originally foreseen by the Conference of Plenipotentiaries in 1974. He referred to the need to bear in mind the interdependence of the issues of the scope of application of the Convention and non-conference lines.

50. The spokesman for the Group of 77 (Côte d'Ivoire) recalled that his Group's approach to the scope of application was reflected in the Group's general statement made in Plenary (cf. chap. I). In particular, it was his Group's opinion that the Code's provisions should apply to all liner shipping. The Group of 77 was ready to review the Code on the basis of the mandate of the Review Conference stipulated in article 52 of the Convention and in conformity with the Gentlemen's Agreement contained in the appendix to TD/CODE.2/2/Rev.1.

51. The representative of China noted that although the Code did not contain any special provisions concerning scope of application, its title, provisions, principles and objectives and the attached resolution 2 fully confirmed that the Convention applied to liner conferences only.

52. The representative of Poland pointed out that the position of his country concerning the scope of application of the Code had been duly reflected in the report of the November 1988 session of the Review Conference (TD/CODE.2/7). He strongly believed that the competitive environment should be maintained in world liner shipping and that the Code should apply to liner conferences

only. He noted that the economic force of non-conference lines in competition with liner conferences brought benefits of expansion of seaborne trade through improvement in quality of service and lower costs. Finally he emphasized that the main objectives of the Code should remain unchanged.

53. The representative of the USSR reconfirmed the position of his country on the scope of application of the Code, as expressed during the November 1988 session of the Review Conference. The provisions of the Code applied only to liner conferences, but the Convention could be amended to make that perfectly clear and to avoid differences of interpretation.

54. The spokesman for Group B (Netherlands), reiterating his view that the Code applied to liner conferences only, said that the provisions of the Convention and resolution 2 on non-conference lines, which formed an integral part of the Final Act, confirmed that approach.

55. The spokesman for the Group of 77 (Côte d'Ivoire) reaffirmed his Group's opinion that the Code provisions should apply to all liner shipping. He emphasized the need to examine the implementation of the Code and to determine the factors that were hampering developing countries in their efforts to increase their participation in world liner shipping. With regard to the question of the scope of application, he recalled that resolution 2 was contained in Annex II to the Final Act and was not part of the Convention itself. Consequently, the scope of application was to be determined by reference to the provisions of the Convention only.

56. The spokesman for Group B (Netherlands) reminded delegations that resolution 2 had originally been proposed by the Group of 77 at the Conference of Plenipotentiaries as an article in the Convention but had been adopted along with the Convention as part of a compromise. Like the Convention, it was part of the Final Act of the Conference and it should therefore be considered alongside the provisions of the Convention itself. With regard to the difficulties faced by developing countries in achieving their goals within the context of the Convention, that was a separate issue not related to scope of application.

B. Reservations to the Convention

(Agenda item 9 (c))

57. The spokesman for the Group of 77 (Côte d'Ivoire) noted that the Convention did not have special provisions regulating the formulation of reservations. Accordingly, the question of accepting reservations should be based on article 19 of the Vienna Convention on the Law of Treaties, which, inter alia, stipulated that reservations might be made only as long as they were not incompatible with the object and purpose of the treaty.

58. The spokesman for Group B (Netherlands) agreed that the Convention did not contain specific provisions for reservations. However, there was no real need to introduce such provisions, since article 19 of the Vienna Convention was adequate in terms of allowing the proper functioning of the Convention on the Code of Conduct. In that connection, any reference to the Vienna Convention in the context of reservations should also include article 20 of

the Vienna Convention, and not just article 19. Furthermore, it would be interesting to know whether the Group of 77 wished to discuss reservations already made or whether the discussion should concentrate on possible future reservations.

59. The spokesman for the Group of 77 (Côte d'Ivoire) said that it might be best to refer in general to the relevant provisions of the Vienna Convention (Part II, section 2) covering reservations to international treaties. In that connection, the Review Conference should consider the situation where countries' regulations, though not embodied in reservations to the Convention, tended to have an effect comparable to reservations. EEC regulations were a case in point. His Group's concern over the EEC reservations was caused mostly by the fact that in some liner trades the principle of cargo-sharing foreseen by the Code had been unilaterally altered through the application of EEC regulations.

60. The representative of China said that when a convention contained no specific reservations, the question of reservations should be handled on the basis of article 19 of the Vienna Convention. Accordingly, if proposed reservations to the Liner Code Convention were not incompatible with the object and purpose of the Convention, they should be allowed.

61. The representative of the USSR said that as the Convention lacked provisions concerning reservations, Contracting Parties should conform to the relevant provisions of international law, including article 19 of the Vienna Convention, which disallowed reservations that were incompatible with the object and purpose of a treaty.

62. The representative of the European Economic Community (EEC) reminded the Committee that reservations made by the EEC member States when ratifying or acceding to the Code had already been explained during the November 1988 session of the Review Conference (TD/CONF.2/7, chap. II.C). With regard to specific concerns about the distinction between the terms "national shipping line" and "third-country shipping line", that distinction, as a consequence of the reservation made by the member States of the EEC in respect of the term "national shipping line", depended on the member State of the Community where the conference line was established, rather than on where its management head office and its effective control were. This approach could in no way affect the national shipping line or lines of the country at the other end of the trade, nor any third-country lines members of the conference.

63. With regard to EEC regulation 954/79, which had been compared to a de facto reservation, and in particular to the provisions relating to the redistribution of cargo shares between the conference lines of the OECD countries in conference trades between the Community and non-OECD contracting parties, he pointed out that the possibility of redistribution was explicitly provided for in article 2 (8) of the Code and therefore did not require a reservation. These provisions in no way affected the rights of any other conference lines, whether from developing or from other third countries. In adopting regulation 954/79, the EEC had taken care to preserve the objectives and principles of the Convention, as well as to take into account the special needs and problems of developing countries. This approach was also recognized by the parties to the Lomé Convention in the provisions of the Convention,

which also made the resolution on non-conference lines binding between the parties to the Convention, and in the Joint Declaration contained in annex XVI of the Convention.

64. Finally, no difficulties should arise with respect to EEC legislation as long as the Code was implemented in conformity with its scope and provisions.

65. The spokesman for the Group of 77 (Côte d'Ivoire) said that in view of the explanation received, he took note that the EEC reservations would not infringe on the interests of third-country lines.

C. Non-conference lines

(Agenda item 9 (e))

66. The spokesman for the Group of 77 (Côte d'Ivoire), reacting to the point raised concerning the link between the question of scope of application (item 9 (b)) and the question of non-conference lines (item 9 (e)) (see para. 6 above), said that each of those two sub-items should be considered separately.

67. The spokesman for Group B (Netherlands) agreed that subitems 9 (b) and 9 (e) could be discussed separately. However, as stated under item 9 (b), in his opinion there should be a close linkage in terms of the way the two issues were to be handled.

68. The Director of the Shipping Division, introducing documents TD/CODE.2/4 and TD/CODE.2/3, referred to the common understanding that non-conference lines should not be prevented from operating as long as they adhered to the principles of fair competition on a commercial basis, and suggested that the Committee might wish to consider the secretariat's observations on the concept of "fair competition on a commercial basis" as set out in document TD/CODE.2/4.

69. The representative of China pointed out that the status of non-conference lines was regulated by resolution 2 annexed to the Convention, and any proposals referring to non-conference shipping lines should be in accord with this resolution. Non-conference lines did not enjoy the same rights as conference lines and therefore should not have to assume the obligations of the Convention.

70. The spokesman for the Group of 77 (Côte d'Ivoire) stated that nothing prevented non-conference lines from participating in the liner traffic generated by the foreign trade of developing countries, while respecting the provisions on trade participation as foreseen in the Code.

71. Referring to the term "fair competition on a commercial basis" contained in resolution 2, he said that this term should be defined more precisely in order to reach a common understanding of its meaning. He recognized the technological development of developed countries' shipping, which was not contested and which, he felt, could also be beneficial to developing countries. However, the developed countries' financial advantage, which was based on considerable direct and indirect subsidies, as well as the use of flags of convenience to circumvent national maritime regulations, were

important factors which undermined the fair competition concept. In that connection, he noted that the EEC had pursued a case against one developing country because its shipping line offered shipping services at lower prices than other outsiders. This demonstrated a high level of protection of shipping on the part of developed countries.

72. The spokesman of Group B (Netherlands) reconfirmed his group's position that the Code did not apply to non-conference lines. The aim of the approach underlying the Code should be to remove restrictions, not introduce new ones. In addition, the general economic context, which centred around the trend towards liberalization and market economy principles, must be taken into account by the Review Conference.

73. Liner conferences were exempted from the full impact of cartel legislation to allow the provision of efficient services at relatively stable freight rates. However, shippers should retain freedom of choice between conference and non-conference lines. Should the conference lines become monopolistic carriers and the competition of non-conference lines be abolished, Group B countries might be forced to reconsider their attitude towards liner conferences and to start regulating the level of freight rates at the governmental level. Thus, new reservations to the Convention by developed countries might become appropriate.

74. The competition between conference and non-conference lines was important and economically significant. Some non-conference lines might cause problems, but such problems should be resolved by the industry. In that connection, it must be asked why some non-conference lines had succeeded in increasing their participation in some trades. It might be that conference lines were not providing a good enough service, and the solution was to improve that service.

75. With respect to the case pursued by the EEC, it was against a shipping company which charged freight rates at an economically non-viable level as compared to freight rates offered by comparable outsiders from within the Community. He confirmed the readiness of his Group to participate in the discussion to preserve competition in shipping.

76. The spokesman for the Group of 77 (Côte d'Ivoire) noted that the responses of the EEC, as well as the spokesman of Group B, to the case in question clearly showed that the concepts of fair competition and regulation were compatible. With regard to the increasing participation of non-conference lines in some trades, the available data were not comprehensive enough to provide a conclusive explanation on the structure and development of total liner trade.

77. The representative of Poland said that independent shipping lines played an important role in the orderly functioning of the liner conference system. He supported the principle of the free choice of shippers between conference shipping lines and non-conference shipping lines, as provided for in resolution 2 adopted by the 1974 Conference of Plenipotentiaries. With regard to regulatory measures, he did not favour either administrative cargo reservation or the administrative regulation of freight rates, since they restricted the flexibility and the freedom of action of commercial parties so necessary in international trade.

78. Referring to the world market situation in shipping which was dealt with in paragraph 72 of document TD/CODE.2/4, he recalled that, since the preparation of that document, two sessions of the Committee on Shipping had been held at which structural changes in world shipping and the consequences of technological changes in liner shipping for developed and developing countries had been considered; the excess capacity of shipping tonnage which had occurred in certain trades had been attributed to many factors. Further studies of these problems by the UNCTAD secretariat were envisaged.

79. The spokesman for Group B (Netherlands) pointed out that the shipper's right to a choice of shipping lines to transport his cargo was considerably restricted in certain geographical regions. He suggested that the Committee might wish to consider this situation.

80. Referring to the diminution in the role of liner conferences and the relative increase in the role of non-conference lines in the carriage of liner cargoes, he again pointed to the fact that a number of conferences had probably not taken advantage of all the benefits offered by the Convention. In some cases conferences had failed to use all the opportunities offered by the Code, and as a result shippers preferred outsiders to the liner conferences. Shortcomings in the implementation of the Code should be identified, and implementation should be improved. He also pointed out that some outsiders from developing countries had considerably increased their participation in liner shipping, probably at the expense of liner conferences.

81. Referring to the problem of subsidies in the context of fair competition in liner shipping, he noted that the level of subsidies provided to shipping companies, where such subsidies existed, was the same for conference and non-conference lines.

82. The spokesman for the Group of 77 (Côte d'Ivoire) noted that the participation of conferences in transportation of cargoes had decreased during the period after 1974 when the Code had been adopted. In that connection, direct and indirect subsidies granted by developed countries to liner companies for the acquisition and operation of vessels had adversely affected market mechanisms and consequently the appropriate working of the Code, as shipping companies from developing and developed countries had been placed on an unequal footing in obtaining access to cargoes.

83. He was of the view that the mechanism of self-regulation was not effective in liner shipping. It had been undermined by the broad expansion of subsidies and protectionism in shipping on the part of developed countries. In this connection, he pointed out that the Code contained specific provisions calling on Contracting Parties to elaborate an updated framework of regulation. It was important that the Code should facilitate the participation of national shipping lines, including those of developing countries, in the transportation of cargoes on an equal basis.

CONSIDERATION OF POSSIBLE GUIDELINES RELATING TO THE INTERPRETATION AND IMPLEMENTATION OF THE PROVISIONS OF THE CONVENTION AND OF POSSIBLE RECOMMENDATIONS CONCERNING THE ACTIVITIES OF NON-CONFERENCE LINES

(Agenda item 10)

84. At the First Committee's 8th meeting, on 3 June 1991, the spokesman for the Group of 77 (Côte d'Ivoire) introduced draft proposal TD/CODE.2/L.5.

85. The spokesman for Group B (Netherlands) referring to item 2 (c) of the draft proposal, "government controlled cargoes", pointed out that the term "government controlled cargoes", since it was not defined, was not very clear for his Group. Also, it was not clear in which cases this principle would be implemented by the developing countries. Finally, the application of such a principle infringed upon the universality of the Code, since article 2, paragraph 4, would no longer apply. An international convention was supposed to set out rules clearly. However, under the Group of 77 proposals for "government cargo", as contained in the documents under consideration, "government cargo" was to be defined by the State concerned, and this therefore would lead to uncertainty.

86. The spokesman for the Group of 77 (Côte d'Ivoire) said that the main idea behind item 2 (c) was to safeguard access for shipping lines in developing countries to cargoes imported or exported by their Government. Such cargoes could include, for example, turnkey plants imported by developing countries, but the cargoes affected would depend on the country and trade concerned. The principles of the Code made clear reference to the special needs and problems of developing countries, and taking account of those special needs and problems would not detract from the universality of the Code. Preferential schemes were used by the developed market-economy countries in the field of shipping, with the result that developing country lines were denied access to certain cargoes, for example cargoes covered by certain types of government export credits or guarantees and food aid. His Group simply wanted to adapt to a situation which already existed in practice in developed countries.

87. The spokesman for Group B (Netherlands) noted that a very limited number of developed market-economy countries had preferential schemes. In the opinion of Group B, any access problem that arose affected not only developing countries but the flags of any State. Within Group B countries, where these schemes existed progress had been made towards their reduction and eventual elimination, while the Group of 77 proposals sought to institutionalize and perpetuate these restrictions. The approach to conference cargoes was in all cases regulated by article 2, paragraph 4, of the Code.

88. The spokesman for the Group of 77 (Côte d'Ivoire) noted with satisfaction that, according to the explanation given by the spokesman for Group B, the cargoes involved in such preferential schemes were covered by article 2 of the Convention and were thus open to carriage by developing country national lines in accordance with the provisions on participation in trade.

89. The spokesman for Group B (Netherlands), referring to item 3 (a) of the draft proposal, "Application of the trade sharing provisions of article 2 of the Convention", he said that the Convention was self-regulatory in nature, and the roles of all parties concerned were clearly defined. Cargo sharing within liner conferences should remain an internal conference matter, and the State should not intervene through any body, whatever its nature. If a conference worked well and took advantage of all the possibilities open to it under the Code, there was no need for any other body to administer trade sharing. With regard to access to conferences for developing country shipping lines, article 1 of the Code adequately regulated all problems concerning membership of shipping lines in conferences, and as far as he knew no national shipping line had ever been refused access to a conference.

90. The spokesman for the Group of 77 (Côte d'Ivoire) emphasized the need to give developing countries an equal opportunity to participate in the carriage of liner cargoes. He considered that, in an environment of self regulation, where cargo shares were distributed among conference members on the basis of past performance, there was no room for young shipping companies from developing countries.

91. He noted the differences in approach of his Group and Group B to the principle of self regulation. In the opinion of his Group, this principle did not work in liner conferences given the absence of fair competition. He noted that the distribution of cargo should be fair. In order to ensure this, a scheme could be administered by a governmental or non-governmental body other than a conference. It was true that shippers must have freedom of choice, but respect for the principle of cargo sharing must take priority.

92. The representative of Poland noted that, in item 3 (a) of the draft proposal, trade shares were to be administered by a "body" other than the liner conference but no definition of this "governmental or non-governmental body" was provided. It might therefore be a commercial organization such as an agent. He noted further that the provisions of the Code formulated only the rights of shipping lines to participate in conference traffic. With this in mind, he queried the justification for the proposed new institutional modalities.

CONSIDERATION OF PROPOSALS FOR AMENDMENTS TO THE CONVENTION

(Agenda item 11)

93. At the First Committee's 8th meeting, on 3 June 1991, the spokesman for the Group of 77 (Côte d'Ivoire) introduced proposal TD/CODE.2/L.6.

94. Referring to the proposed new text for article 1, paragraph 2, relating to "Membership", the spokesman for the Group of 77 (Côte d'Ivoire) said that shipping lines from developing countries often encountered difficulties when they applied for membership of conferences. Acceptance of a certificate furnished by the appropriate authority as evidence of the ability and intention of the line to operate should improve the possibility of developing countries' shipping lines being admitted to conferences.

95. The representative of the USSR said that it was not clear from the proposed new text which party (the shipping company, the appropriate authority or both) would bear responsibility if the line failed to organize a regular, adequate and efficient service on a long-term basis, as defined in the conference agreement, or what the consequences would be for the appropriate authority and the shipping line which failed to organize this service within the conference. In his opinion, the Government should bear responsibility if it furnished the certificate in question, and this should be reflected in article 1, paragraph 2, of the Code. However, certificates should not be provided to companies that had no ships, otherwise so-called non-vessel liner conference shipping would develop, and this would adversely affect the quality of conference services, the level of freight rates and eventually shippers' positions.

96. The spokesman for Group B (Netherlands) noted that the proposal of the Group of 77 would involve an increase in the role of Governments in shipping. In his opinion, the role of Governments was clearly laid down in different articles of the Convention. That role was, inter alia, to recognize a national line. However, the conference entry test, as laid down in article 1, should be left to the commercial parties, i.e. conferences. Furthermore, he felt that the consequences of such a proposal would lead to a situation where Governments would be giving financial guarantees to their national shipping lines through the appropriate authority if lines failed to organize an adequate and long-term service, and this was inconsistent with the previously expressed position of the Group of 77 on the problem of subsidies in shipping. He also noted that no reference to the use of chartered tonnage was included in the proposed text, which would thus result in discrimination between national and third-country shipping lines.

97. The representative of China said that he had some difficulties with the proposed new text, as it did not refer to the important question of chartered tonnage and it included a new element concerning the issue of a certificate. These problems must be considered very carefully.

98. The spokesman for the Group of 77 (Côte d'Ivoire) said that the objective of the proposed new text was to ensure that lines were not refused entry into liner conferences. The financial guarantee to cover any outstanding financial obligation in the event of subsequent withdrawal, suspension or expulsion from membership should be deposited by the line itself. Should the line fail to meet its obligations, it could be expelled from the conference in accordance with the conference rules.

99. In his opinion wider participation of developing countries' lines would in fact contribute to the process of liberalization in shipping; there could be no liberalization if conferences remained closed. With regard to the involvement of Governments in the implementation of the Code, he noted that, in many developing countries, the State was a shipowner, and as such must have the same rights as private shipowners. This must be taken into consideration when discussing the proposed text.

100. The representative of the Islamic Republic of Iran, referring to the point raised by China concerning chartered tonnage, said that shipowners in a large number of countries operated chartered tonnage. The proposal of his

Group was therefore not intended to limit this practice. It should be noted that the Convention itself permitted the use of chartered tonnage, and also that most conferences did not restrict the use of chartered vessels.

101. Referring to the proposed new text for article 2, paragraph 4 (a), relating to "Participation in trade", the spokesman for Group B (Netherlands) said that this proposal was not in accordance with the Gentleman's Agreement contained in the appendix to document TD/CODE.2/2/Rev.1 and noted that the mandate of the Review Conference was limited to the review of the working and implementation of the Code, as agreed. Moreover, the proposed new text did not define what was meant by government cargoes and therefore left much ambiguity. Furthermore, his Group could not agree to proposals which would alter the nature of the Convention, inter alia by making article 2, paragraphs 1-16 no longer applicable.

102. The representative of China noted that the provisions of the Code applied only to liner conferences, and the proposed amendment, by referring to "all cargoes carried by liner shipping", would thus fundamentally alter the nature of the Convention. Moreover, the proposed new text for paragraph 4 (a) would not be consistent with other paragraphs of article 2, which referred to conference members' cargoes.

103. The representative of the USSR said that the proposed new text of paragraph 4 (a) would substantially change the substance and objectives of the Convention. A convention covering all liner shipping might be discussed elsewhere, as the present Review Conference must confine itself to liner conferences.

104. The spokesman for the Group of 77 (Côte d'Ivoire) pointed out that his Group was indeed abiding by the Gentleman's Agreement, which entitled participants to make amendments to the Code. Referring to his Group's proposal, he noted that if a private shipper had the right to choose a carrier, a State acting as a shipper should be in a position to exercise the same right. Moreover, the main objectives and principles of the Code indicated that the special needs and problems of the developing countries should be taken into account. For this objective to be attained, developing country lines must have preferential access to Government cargoes.

105. Referring to the proposed new text for article 4, paragraph 3, relating to "Sanctions", the representative of the USSR said that the text itself was logical. However, the term "sponsoring authority" proposed by the Group of 77 was not clear and was not used anywhere else in the Convention.

106. The spokesman for the Group of 77 (Côte d'Ivoire) agreed that the term "sponsoring authority" could be replaced by the term "appropriate authority".

107. Referring to the proposed new text for article 6, on "Conference agreements", the representative of the USSR expressed doubts with regard to the proposal on the comprehensive illustrative lists of malpractices to be prepared by conferences. He noted that without an internationally accepted understanding and definition of malpractices, the approach of different conferences towards the subject matter of such lists might be different. The

Review Conference might wish to request the Committee on Shipping to draw up a non-mandatory model list to be taken into account by conferences vis-à-vis specific features of relevant trades.

108. The spokesman for Group B (Netherlands) pointed out that provisions providing for adoption by conferences of a list of malpractices were already contained in article 5 of the Code. Such information should already be made available to the appropriate authority upon request, as foreseen by the Code. Apart from questions of principle, if this became a routine matter, then distribution of these lists on an obligatory basis would mean additional expenses for conferences. In his opinion, the proposed amendment to article 6 was not necessary, as articles 5 and 6 should be seen in conjunction with each other. There could, in his opinion, be no doubt that a list of malpractices would be covered by the term "other documents" in article 6.

109. The spokesman for the Group of 77 (Côte d'Ivoire) said that the aim behind his Group's proposal was to ensure transparency in the activities of liner conferences.

110. Referring to the proposed new text for article 9, on "Availability of tariffs and related conditions and/or regulations", the representative of the USSR said the proposed text presented no major problems, but he suggested that proper attention should be paid to the recommendations elaborated by the Group of Experts to Develop and Recommend Model Rules for Multimodal Container Tariffs and adopted by the Committee on Shipping. These recommendations also contained provisions concerning specifically the availability of tariffs.

111. The spokesman for Group B (Netherlands) noted that the Group of Experts had concentrated its work on the structure of the container tariffs. If tariffs had to be made available systematically as proposed, instead of on request, this would be costly for all concerned. Tariffs were in any case available through EDI.

112. The spokesman for the Group of 77 (Côte d'Ivoire) said that in his opinion tariffs should be received by shippers systematically in order to put them on an equal footing with carriers. Additional costs which might accrue to the shipper in this connection would be over-compensated by potential freight cost savings based on improved information on and understanding of all matters relating to liner shipping tariffs.

113. Referring to the proposed new text for article 14, paragraphs 3, 5 and 6, relating to "General freight rate increase", the spokesman for Group B (Netherlands) said that his Group was not aware of problems having arisen in connection with article 14. Making it obligatory to have an independent accountant's report prior to every general freight rate increase would not increase transparency, and there would be circumstances where such a report was not necessary. Much depended on circumstances in the market, and in particular the level of participation of outsiders. In some cases, such a report would have only theoretical value. In addition, such an approach might encourage dissent, and it would reduce the Code's flexibility. Finally, his Group was concerned by the proposed deletion of the phrase "subject to procedures prescribed in the Code" in paragraph 5.

114. The representative of China said that he did not have any difficulties with paragraphs 3 and 5 of article 14 as proposed by the Group of 77, but in his opinion the existing text of paragraph 6 was better than the proposed new version.

115. The spokesman for the Group of 77 (Côte d'Ivoire) said problems certainly did arise in connection with general freight rate increases, since such increases were sometimes introduced without proper consultations with shippers. As regards the cost of accountants' reports, he recalled that general freight rate increases did not happen every day, and the submission of an independent accountant's report would not constitute an undue burden but on the contrary would facilitate negotiations. The deleted phrase on Code procedures could be reinstated.

116. Referring to the proposed new text for paragraph 4 of article 16, relating to "Surcharges", and paragraphs 2 and 3 of article 17, relating to "Currency changes", the spokesman for Group B (Netherlands) said that the existing wording of the Code was flexible enough, as it allowed parties to agree upon a longer period if they wished to do so. In drafting the Convention in 1974, the Plenipotentiaries had sought a balance of interests. Even in 1991, the wording of the Code was flexible enough to cope with present developments.

117. The spokesman for the Group of 77 (Côte d'Ivoire) said that it was preferable for the standard periods proposed in the Convention to be longer.

118. With regard to the proposed new text for article 29, the spokesman for Group B (Netherlands) said great care must be taken when moving away from a consensus achieved in the past. His Group was of the opinion that article 29 did not need to be changed.

Report of the Second Committee 3/

CONSIDERATION OF SPECIFIC ISSUES RELATING TO THE CONVENTION AND ITS IMPLEMENTATION

(Agenda item 9)

(a) Technological and structural changes in world liner shipping;

(d) Modalities of implementation;

(f) Resolution No. 3 on local conciliation;

(g) Other issues.

119. The Deputy Director of the Shipping Division drew attention to the relevant parts of documents which had been before the Review Conference in 1988 and were also before the resumed fourth session. He referred in particular to: TD/CODE.2/4, Issues for the Review Conference; TD/CODE.2/3, the Views of Governments on the Review Conference; TD/B/C.4/300 and Corr.1, Review of implementation of the Convention on a Code of Conduct for Liner Conferences; UNCTAD/ST/SHIP/2, Supplementary materials to TD/B/C.4/300; UNCTAD/ST/SHIP/1, Guidelines towards the Application of the Convention on a Code of Conduct for Liner Conferences.

120. The spokesman for Group B (Germany), in a general statement, referred to remarks already made in Plenary and Committee meetings during the November 1988 Review Conference. With respect to technological and structural changes in world liner shipping (item 9 (a)), he pointed out that no major technological changes had occurred in recent years. However, there had been structural changes which Group B felt could usefully be discussed, such as the liberalization of shipping policies in various parts of the world, and in this context he noted with interest the decision of ministers of the Andean Pact to liberalize shipping and the success of some developing countries' shipping companies in liner and bulk shipping. These developments were evidence of increasing momentum towards free circulation of shipping and the consequent attainment of economic benefit for both shipping and trade. Rationalization and restructuring by shipowners had led to better capacity utilization. With regard to the shipping market, he noted that the overall deceleration of trade in manufactured goods pointed to a softening of demand for liner shipping. Group B would study all proposals by other Groups and China in terms of effects of further rationalization and restructuring. Referring to item 9 (d), modalities of implementation, and the question of whether the Convention should be regarded as a regulatory framework or whether it should serve as a promotional instrument for Contracting Parties, Group B firmly believed that national fleets must not expand through artificial promotion. On the role of Governments in applying the Code, it was Group B's view that once legislation had been enacted to incorporate the Convention into national law, the Government's role was circumscribed to certain statutory functions. Thereafter the implementation of the Code would be left to the self-management of the commercial parties concerned. In Group B's view, it was never intended in 1974 that responsibility for the full range of matters covered by the Code's provisions would be transferred from the commercial sector to

administrations. This was and still is the Group's firm belief. Rather, the Convention had established a self-regulatory framework in which the role of appropriate authorities was restricted. The Convention itself provides the means through which disputes can be resolved, and many conferences have established appropriate frameworks for consultation with shippers to address and discuss problems related to conference liner shipping. On item 9 (g), Group B had no further issues to raise.

Technological and structural changes in world liner shipping

(Agenda item 9 (a))

121. The representative of the Union of Soviet Socialist Republics observed that technological innovations had entrained substantial changes in liner shipping. Containerization had led to structural changes in the form of consortia, joint ventures, round-the-world services, slot chartering and multimodal transport of containers. These changes affected implementation of the Code. Recalling article 2, paragraph 5 of the Convention, he said that it explicitly regulates participation in the carriage of liner conference cargo generated by foreign trades of Contracting Parties in those cases where Contracting Parties do not have a national shipping line. He noted that without prejudice to the technological and structural changes, a comprehensive approach should be taken to the matter of the Convention implementation. Besides the changes mentioned, implementation of the Convention had been hampered by such problems as: uncertain or negative attitudes on the part of some States towards acceding to the Convention; insufficient clarity of wording of some provisions; and lack of uniform interpretation and implementation of the Convention provisions by Contracting Parties.

122. The Deputy Director of the Shipping Division introduced Chapter III of TD/CODE.2/4, which had been prepared on the basis of technical meetings and regional-level seminars and had taken into consideration the views of Governments set out in document TD/CODE.2/3. Since the adoption of the Convention, world liner shipping had undergone technological and structural changes. In identifying the key issues which might have a direct impact on the Code, he cited five major areas for consideration: (i) development of transshipment services, (ii) development of shipping consortia, (iii) development of multimodal transport, (iv) non-vessel-operating common carriers (NVOCCs), and (v) changes in freight tariff structures.

123. In addition, he drew the Committee's attention to new organizational forms, differences between conference and non-conference lines, consortia within and outside conferences and slot chartering arrangements in relation to national shipping lines. He also raised questions on: (i) whether the Code in its present form adequately covered multimodal transport operators, (ii) whether non-vessel operating common carriers (NVOCCs) could be considered as national shipping lines, (iii) the transparency of sea-leg freight tariffs, and (iv) the current practice of quoting lump-sum through-rates (commodity box rate, freight-all-kinds box rate) for multimodal operators and non-vessel operating common carriers.

124. The spokesman for the Group of 77 (Côte d'Ivoire) recalled the Group's opening statement made in the plenary meeting in which he had made reference to technological changes affecting world liner trades, in general and those of developing countries, in particular. In this context he drew special attention to the development of containerization and resulting organizational changes in liner shipping such as multimodal transport, transshipment, development of consortia and space chartering operations. He stated that his Group was not opposed to these developments but desired to see the Code adapted in such a way as to incorporate these developments and to afford developing countries a fair share in these transport operations. On the specific issue of transshipment, he recalled the impact which this had had on the determination of cargo rights and the implementation of cargo sharing provisions. His Group considered it necessary to recognize explicitly the rights of cargo-generating countries and countries of final destination, including land-locked countries, to participate in the carriage of transshipment cargoes in line with the general provisions of the Code. Furthermore, there was a need for a "common understanding" with regard to the quality of the service provided and the level of costs of transshipment services.

125. The spokesman for Group B (Germany), commenting on TD/CODE.2/4, stated that his Group viewed the document as covering a broad range of factual issues. He reiterated that liner shipping had undergone considerable structural changes and emphasized that this aspect was especially relevant to the Conference. With regard to transshipment cargo, Group B considered that the Convention applied and that it recognized the rights of national conference shipping lines of land-locked countries of origin and final destination of cargo. Referring to article 2, paragraph 4 (a), Group B saw no necessity for any alteration to the provision that determines the participation rights for national conference shipping lines.

126. The spokesman for the Group of 77 (Côte d'Ivoire) confirmed his Group's belief that the Convention also applied to transshipment cargo, thereby recognizing the rights of national shipping lines of countries of origin and final destination including land-locked countries to participate equitably in the carriage of transshipped cargo.

127. On the subject of development of shipping consortia, the spokesman for Group B (Germany) said that the growth of seaborne trade since 1983 and the concurrent decline in freight tariffs was forcing shipowners to rationalize their operations. Rationalization in the form of consortia, pooling agreements and slot charter operations was essential in a competitive market. The positive effect of increased cooperation among shipping lines was better capacity utilization, control of freight tariffs and better service to shippers. Group B saw consortia as specific joint economic ventures that could be considered as liner conferences only if they fulfilled the definitions of the Convention. Furthermore, he indicated that Group B would not be able to accept any expansion of the definition of liner conferences as contained in the Convention as there was no evidence to suggest that forms of cooperation such as consortia undermined the Code's objectives.

128. The spokesman for the Group of 77 (Côte d'Ivoire) stated that if a consortium operated within a conference, problems related to cargo sharing and tariffs would be regulated under the provisions of the Code. When a consortium operated outside a conference, it should in any case be considered as a conference for purposes of the Code and thus be subject to the provisions of the Convention. When a consortium was operating parallel to a conference on a given trade route, there must be an arrangement between the consortium and the conference concerning the application of the provisions of the Code, in particular regarding trade participation. Concerning the definition of national shipping lines contained in the Code, he drew attention to the growing importance of space/slot chartering operations for developing countries' lines, in particular those of land-locked countries. In the context of present technological developments and the increasing need to realize economies of scale, vessels were becoming bigger and more specialized and, consequently, more capital-intensive in their operation. Investment in, or chartering of, such container vessels was beyond the reach of many developing countries, both for financial reasons and because of insufficient cargo base. Consequently, the Group considered it necessary that the relevant definition be amended accordingly, to provide for the eligibility of non-vessel operating lines on a space/slot charter basis as a national line under the Code. Turning to the subject of multimodal transport, the Group of 77 raised the question of provisions for multimodal transport services by conference lines and affirmed that the Code would apply to the sea-leg of the service for cargo-sharing purposes. Furthermore, the quality and rates for such multimodal services would be subject to the consultation procedure foreseen under the Code.

129. With regard to multimodal transport, the spokesman for Group B (Germany) stated that the pier-to-pier section of multimodal transport of liner conference shipping lines would be governed by the Code. The application of all stipulations in the Convention to through-rate operations by conferences would pose a number of serious legal and practical problems for liner conferences as regards, for example, the allocation of cargoes in accordance with the provisions of the Convention and the buying in of services by conferences from other suppliers (railways, truck operators, etc.) which fell under a different legal régime.

Modalities of implementation

(Agenda item 9 (d))

130. The Deputy Director of the Shipping Division drew attention to relevant parts of document TD/CODE.2/4 which specifically related to the work of the Second Committee. He proposed examination of the role of Governments vis-à-vis Code implementation, in terms of three topics: (a) cargo sharing, (b) consultation between shippers and conferences, (c) monitoring by Governments of the implementation by conferences of Code provisions.

131. The spokesman for the Group of 77 (Côte d'Ivoire) stated that the Code related to liner trade generated by the foreign trade of States and hence it was difficult to treat modalities of implementation before the scope of

application had been defined, although the latter subject was outside the mandate of the Second Committee. It was the Group's conviction that the Code applied to regular liner trade generated by the countries concerned.

132. The spokesman for Group B (Germany) observed that agenda item 9 (d) was closely related to the "Scope of Application" being dealt with by the First Committee. He noted that his Group's position on the role of Governments was that it should be restricted to receiving information from conferences and participation in the consultation process but should not extend to involvement in decision-making. While the Code covered the rights and obligations of Contracting Parties, he stressed that implementation rested with the conferences. He cited article 47 (1) of the Convention which called on Contracting Parties to enact legislation or to take other measures for the implementation of the Convention. It was Group B's view that Governments should distance themselves from the day-to-day activities of commercial parties and that the process of consultation with shippers should be carried out in a commercial environment. Any attempt to enhance the role of Governments, other than that provided for under the Code, would be viewed by Group B as outside the purview of the present Review Conference.

133. The representative of China noted that since the adoption of the Convention, in 1974, implementation had been satisfactory. However, he stated that the Code had no specific provision regarding its implementation. He observed that countries with different socio-economic systems were adopting different implementation modalities. He reiterated that China would cooperate with other Groups towards the elaboration of non-mandatory guidelines based upon consensus.

134. The spokesman for the Group of 77 (Côte d'Ivoire) noted that the Code made provisions in relation to consultations but did not make specific reference to modalities of implementation. Recalling the statement made by his Group in 1988, he observed that in most developing countries the State was the single largest importer and exporter, either directly or indirectly, through a State-owned enterprise. Often the State was also the largest carrier. With reference to the State as a Contracting Party to the Code, he stated that the Code was an instrument of international public law conferring rights and obligations on Contracting Parties, which are States. Hence there was a need for the Government to play an important role in achieving the objectives set out in the Code. The first objective was to stimulate the development of regular shipping services. The second objective was to balance the interests of those providing the service and those using the service. Consequently, Governments should play an active role in implementing the Convention, in particular with regard to the application of the provisions by conferences and regular shipping lines. Equally, an active role was to be played in supporting the development of shippers' organizations, consultations between shippers and carriers and in settling differences between States Contracting Parties to the Convention.

135. The spokesman for Group B (Germany) noted that his Group saw a closer relation between the Code and private law. As self-regulation was carried out in a commercial environment, this was an indication that the Code was in the domain of private law. Moreover, his Group believed that the working and

implementation of the Convention should be the responsibility of the conferences. Once the Contracting Parties had enacted legislation, it was the shippers and shipowners who were the active parties.

136. The spokesman for the Group of 77 (Côte d'Ivoire), recalling the statement of his Group in 1988, reiterated that the view according to which the Code provided for a self-regulatory framework was not, in any case, acceptable to his Group. He furthermore reiterated his Group's position that the Code was an instrument of international public law. The international community had gone beyond private commercial law, as illustrated by the ESC/CENSA Code, to give attention to the needs of developing countries. There were trade imbalances, he said, citing as examples two States which were Contracting Parties, one of which transported only 2 per cent of its own liner trade. Côte d'Ivoire, before accession to the Convention, was carrying only 4 per cent of its liner trade.

137. The spokesman for Group B (Germany), commenting on the examples cited, stated that the portion which a country carried was not significant; in their shipping policies, countries might decide to enter the system as users rather than as providers of services. He reiterated that the role of Governments was to recognize States' rights and obligations under the Convention, to receive information, and to participate in consultations only if so desired by commercial interests. He further stated that cargo sharing should be determined autonomously by conferences in accordance with the provisions of the Code. Government intervention in the process of consultations or pre-shipment control was not acceptable.

138. The spokesman for the Group of 77 (Côte d'Ivoire), recalling his Group's position on self-regulation, reaffirmed that the State as a Contracting Party to the Convention had rights and obligations to take the necessary action to ensure the proper functioning of the Code. Each State should take necessary measures in order to obtain access to its cargo share under the provisions of article 2 of the Code.

139. The spokesman for Group B (Germany) recalled that the basic purpose of the Code was to set internationally accepted norms. The Convention did not include any articles regulating cargo shares, freight rates, membership, or arbitration of commercial differences. In the absence of a reservation to the contrary, it may be assumed that upon enactment of the Code through national legislation a Contracting Party had accepted the basic tenets of the Code, namely (a) self-management by parties engaged in commercial activities and (b) non-interference of Government in matters left to commercial parties. The Review Conference should be addressing issues of public law, he agreed, but Governments had no basis under provisions of the Code to intervene in areas reserved for parties engaged in commercial activities.

140. The spokesman for the Group of 77 (Côte d'Ivoire) stated that his Group attached great importance to the role of Government in monitoring the implementation of the provisions of the Code. Although the Convention applied to a commercial domain, Governments as Contracting Parties to the Convention had both the right and the obligation to assure that the Code was implemented properly at the operational level.

141. The spokesman for Group B (Germany) noted that government-to-government consultation on modalities of implementation was viewed by his Group as contradictory to self-regulation. A Government could request bilateral or multilateral consultations by means of diplomatic exchanges on a case-by-case basis; however, regular dialogue was not necessary. Consultations between Governments, as noted in paragraph 64 of TD/CODE.2/4, may take place in certain cases where authorities at the two ends of a trade would need to hold consultations.

142. The spokesman for the Group of 77 (Côte d'Ivoire) stated that, for better implementation of the Code, consultations were required on a regular basis between the shippers, carriers and the Governments concerned so as to track the changes in supply and demand and modifications of the cost structure. Referring specifically to frequent changes in freight rates and surcharges, he noted that regular consultations were needed as this would assist in correcting imbalances and avoid unjustified increases in freight rates. Regular consultations would also improve the quality and efficiency of shipping services. He made specific reference to objectives (b) and (c) of the Code, stating that they provided guidance for the consultation process, bearing in mind the interests of developing countries and the requirements specific to each trade. These objectives could best be obtained by a subregional or regional approach to consultations.

143. The spokesman for Group B (Germany) observed that Governments were of course free to discuss in their consultations matters related to freight tariff negotiations, rationalization of shipping services and cargo sharing. Governments should encourage commercial parties to consult at regional and subregional levels. However, the Group viewed co-ordinated Government intervention enacted through supranational legislation as contrary to the Convention.

144. In this connection, the spokesman for the Group of 77 (Côte d'Ivoire) requested clarification as to whether regulations issued by the European Economic Community (EEC) constituted national or supranational legislation. His Group had the impression that the EEC and OECD member countries which were Contracting Parties to the Convention had taken a regional or coordinated approach to the implementation of the Code.

145. The representative of the European Economic Community (EEC) responded that the EEC, in accordance with EEC legislation and taking into account the Code to which eight member States were Contracting Parties, had undertaken consultations with third countries in the framework of the Lomé Convention in an effort to seek solutions to problems which had arisen with measures taken by those countries. No general statement could be made as to whether the implementation of the Code was carried out on a regional or subregional basis.

146. The spokesman for Group B (Germany) stated that countries Contracting Parties to the Liner Code Convention, in agreeing to any regional or supranational legislation, must not be in breach of the provisions of the Code.

Resolution No. 3 on local conciliation

(Agenda item 9 (f))

147. The Deputy Director of the Shipping Division, in introducing agenda item 9 (f), recalled that the Conference of Plenipotentiaries when it adopted the Convention in 1974 had also adopted resolution No. 3 on local conciliation whereby the first Review Conference was to give priority attention to the subject of local conciliation as a mechanism for effective settlement of certain disputes. He suggested that the Committee might wish to decide whether there was a need to elaborate provisions on local conciliation which would supplement those on international mandatory conciliation already in the Convention.

148. The spokesman for Group B (Germany) stated that the provisions of the Convention and the adopted resolutions set out in Annex II to the Final Act had legal implications for all Contracting Parties. His Group proposed that resolution No. 3 on local conciliation be retained for consideration at the next Review Conference.

149. The spokesman for the Group of 77 (Côte d'Ivoire) stated that his Group considered that, because the resolution was contained in Annex II to the Final Act it did not form part of the Convention and therefore did not legally bind Contracting Parties but implied only a moral obligation. However, all resolutions which promoted a better understanding of the Convention should be retained. With respect to resolution No. 3 on local conciliation, his Group agreed that it could be considered at the next Review Conference.

CONSIDERATION OF POSSIBLE GUIDELINES RELATING TO THE INTERPRETATION AND THE IMPLEMENTATION OF THE PROVISIONS OF THE CONVENTION AND OF POSSIBLE RECOMMENDATIONS CONCERNING THE ACTIVITIES OF NON-CONFERENCE LINES

(Agenda item 10)

150. The Chairman drew the attention of the Committee to agenda item 10 and the proposals by the Group of 77 which were before the Committee for consideration, then invited the spokesman for that Group to introduce the proposals.

151. The spokesman for the Group of 77 (Côte d'Ivoire) highlighted the relevant parts of TD/CODE.2/L.5, "Guidelines to be observed with regard to the working and implementation of the United Nations Convention on a Code of Conduct for Liner Conferences", as they applied to Committee II.

152. The spokesman for Group B (Germany) sought clarification on the formulation in paragraph 2 of the text (TD/CODE.2/L.5) which read "... if operating outside of a group of shipping lines which constitutes a liner conference ...". Citing the definition of a liner conference in the Code, he stated that when a consortium operated under uniform or common freight rates,

it was treated as a conference. It was Group B's view that if a consortium fitted the definition as set forth in the Code, it would constitute a conference.

153. The spokesman for the Group of 77 (Côte d'Ivoire), in replying to Group B, stated that the proposed text was intended to be a guideline. As the number of shipping corsortia had grown considerably, the Group sought to take into account this phenomenon in the definitions. Certain consortia had developed outside the conferences. These should be considered as liner conferences when they were applying uniform freight rates. Moreover, if a consortium, operated outside a liner conference, provided a regular service and met other conditions, inter alia, frequency of sailing, then it should be considered as a liner conference and hence should be accounted for in the definition even if it did not apply common freight rates.

154. The spokesman for Group B (Germany) drew attention to the definition of a liner conference in the Code and stated that for a consortium to be considered as a liner conference, it would have to operate under uniform or common freight rates.

155. The spokesman for the Group of 77 (Côte d'Ivoire) recalled his earlier statement and stated that whatever form a consortium might take, if it provided agreed conditions of a common shipping service it should be considered as a liner conference, whether it operated under uniform freight rates or otherwise.

156. The spokesman for Group B (Germany) noted that, in the view of his Group, all modern forms of cooperative shipping lines contributed to the further development of shipping markets and that this was specifically valid for consortia. He stated that he was not aware of instance in which a consortium operated outside a liner conference.

157. The spokesman for the Group of 77 (Côte d'Ivoire) stated that a number of different consortia existed although no exhaustive list of the various types of consortia was available. He referred to the definition of a national shipping line in the Convention where it was clear that consortia would not necessarily be considered a joint venture. He cited the example of joint operations of a fleet with specific schedules, and other transport agreements, in which parties maintaining their individual identity would not form a consortium. He stressed that the proposal made by the Group of 77 took into consideration all possible complicated cases in consortia operations and would thus update the definition of liner conferences.

158. The spokesman for Group B (Germany) recalled earlier discussions in the Committee and expressed surprise concerning a difference in the present proposal put forward by the Group of 77 in paragraph 2 (a) of document TD/CODE.2/L.5, particularly the reference to a multimodal transport service of a regular shipping line, which would mean that lines other than conference lines would be subject to the cargo-sharing provisions of the Code. He reiterated Group B's view that the Code provisions adequately covered the sea-leg of multimodal transport of cargo by conference lines. His Group could not accept any extension of the Code's cargo-sharing provisions to multimodal shipping lines outside liner conferences.

159. The spokesman for the Group of 77 (Côte d'Ivoire) confirmed that in the proposal his Group had intended especially to cover cargo sharing as applied to the sea-leg of a multimodal transport operation. The proposal referred to regular cargo lines carrying foreign trade generated by States Contracting Parties to the Convention and was in line with previous statements of the Group of 77.

160. On the subject of transshipment services, the spokesman for the Group of 77 referred to their rapid development and called the attention of the Committee to the proposal which took cognizance of origin and destination of cargo whether the State involved was a coastal or a land-locked State. This proposal reflected the principle that national shipping lines of States of origin and destination of cargoes should have a right to participate in the trade.

161. The spokesman for Group B (Germany) stated his Group's view that a conference line with ships flying the flag of a land-locked State was covered by the provisions of the Code as reflected in article 2 (4) (a). Hence an amendment to the Code by way of special provisions as proposed by the Group of 77 was not necessary.

162. The spokesman for the Group of 77 (Côte d'Ivoire) stated that his Group would like the declaration of Group B recognizing the right of participation of land-locked country carriers to be reflected in the report of the Committee.

163. The spokesman for Group B (Germany) saw no objection to its inclusion in the Committee II's report. However, Group B was not prepared to accept the wording "regular shipping lines". He reiterated his Group's position that provisions in the Code which related to conference shipping lines of land-locked countries were adequate.

164. The spokesman for the Group of 77 (Côte d'Ivoire) expressed disappointment that agreement could not be reached and reiterated the understanding of his Group that the right of land-locked country carriers to participate extended to traffic of regular lines.

165. The representative of China stated that China held a different view regarding the formulation "regular shipping lines". The scope of application and the objectives of the Convention were clear. His delegation felt that inclusion of the words "regular shipping lines" would surpass the scope of application of the Convention and would hinder achievement of the objectives of the Convention or the results which could be achieved in the Review Conference. Furthermore, any enlargement of the scope of application would involve consideration of other issues which might be difficult to resolve in this Conference. He stated that China therefore would have reservations about the inclusion of "regular shipping lines".

166. The spokesman for Group B (Germany) noted that the proposals put forward by the Group of 77 in paragraph 3 (b) of document TD/CODE.2/L.5 differed from the statements made by that Group in the earlier meetings of the Committee. It was his understanding that all groups and China had agreed to postpone consideration of agenda item 9 (f) "Resolution No. 3 on local conciliation" until the next Review Conference. His Group therefore found it had to

understand why a proposal on consultation machinery was now being introduced. Non-mandatory guidelines as set out in this proposal would make the existing provision in the Code redundant and would be a complete reversal of the principles in the Convention, with respect to consultation machinery, which states in article 11 that: "Appropriate authorities shall have the right ... to participate fully in the consultations, but this did not mean that they play a decision-making role". Guidelines could only take stock of an understanding regarding an interpretation but could not contradict any article. His Group could not agree to the proposal to transfer consultation functions from the appropriate authorities to shippers' organizations. If the intention was to restructure completely a provision in the Convention, Group B could not understand why a proposal had not been introduced to amend article 11.

167. The spokesman for the Group of 77 (Côte d'Ivoire) stated that, according to article 11, competent authorities had the right to participate fully in consultations. His Group believed that it was current practice for appropriate authorities to participate fully in the consultation machinery with liner conferences and regular shipping lines in a decision-making role. He insisted that while there was no obligation, the Convention still provided for the right to an active role in the decision-making process. The Group of 77 wished to clarify the role of authorities regarding consultations. The proposed guidelines were intended to express in a positive form the interpretation of the relevant provision contained in the Code. His Group considered that a Contracting Party was free to transfer consultation functions to shippers' organizations if they so desired; the consultation machinery was often highly technical and so shippers' organizations might be better positioned to analyse the various elements involved in it. This however would not impinge on the basic rights and obligations of the appropriate authority.

168. The spokesman for Group B (Germany) stated that guidelines to an international convention had a legal connotation and could not contradict the provisions. He questioned if established practice anywhere allowed authorities a decision-making role, as would be the case in the proposal. Where authorities had participated in consultations with commercial parties, they had been cooperative and had not taken a decision-making role. As for the proposal to transfer consultation functions from the appropriate authorities to shippers' organizations, he observed that there was nothing to transfer to shippers' organizations, rather it was shipowners who needed to participate in consultations.

169. The spokesman for the Group of 77 (Côte d'Ivoire) reiterated that appropriate authorities were not necessarily obliged to play a decision-making role, which however would not imply that they were not able to do so. He further reiterated that the transferring of the functions of appropriate authorities over to shippers' organizations did not mean that the latter would become the appropriate authority. His Group viewed that consultations were technical and so the Contracting Party State may transfer certain functions to suitable shippers' organizations. The proposal covering delegation of responsibility on consultation functions was intended to help in achieving agreement and was simply a guideline rather than an amendment to the Convention.

170. The spokesman for Group B (Germany) stated that the spokesman for the Group of 77 had not answered the question raised and he wished to have this point reflected in the report. He reiterated that while discussing the role of Governments in decision-making, the Group of 77 had not raised any point. He requested legal clarification regarding the last sentence of article 11, paragraph 1 of the Convention as well on the status of guidelines as an instrument to revise a provision of the Code. As for the consultation functions which might be transferred to shippers' organizations, he stated that these functions might include decision-making. He stressed that this was as it should be because it was the responsibility of the commercial parties to decide.

171. The spokesman for the Group of 77 (Côte d'Ivoire) stated that in his previous interventions he had repeatedly emphasized the role of Governments because of its importance. Governments as Contracting Parties had rights and obligations. Within this framework they could give directions to commercial parties to ensure the proper implementation of the Code.

172. The representative of China stated that after hearing the views presented by the Group of 77 and Group B, his delegation noted three issues, as follows. (a) As to whether regular shipping lines should be included in the consultation machinery, China considered that their participation in the consultations would hardly help the Conference to solve the problems on schedule. Moreover, from a legal perspective, the Code was concerned with liner conferences so that in matters relating to non-conference lines it would be difficult to fix the latter's rights and obligations. (b) China believed that according to article 11 of the Code, the established consultation machinery was a continuation of commercial activity. This consultation machinery was a flexible mechanism for the promotion of liner shipping. The new proposal which introduced the definition of a decision-making role into the said consultation machinery would substantially alter the old system with consequences which would be difficult to predict and so it would be premature at this stage. (c) Referring to the transfer of consultation functions to shippers' organizations, China had reservations on the present proposal but believed that the matter could be duly considered by some other appropriate international conferences.

173. The representative of the USSR noted that the proposals introduced had attempted to broaden the scope of the Convention and that this was not acceptable. The USSR could not agree to proposals for guidelines which in fact would make serious amendments to the Convention.

174. The spokesman for the Group of 77 (Côte d'Ivoire) stated that the proposals were not intended to broaden the scope of application of the Convention but had rather sought to reflect a certain reality and to achieve a common understanding with other Groups and China. In any case, a guideline could not have the legal quality of an amendment.

175. The spokesman of Group B (Germany) referring to the discussion in Committee I on the formulation "... at both ends of the liner trade ..." (TD/CODE.2/L.5 para. 3 (b)), noted that article 11 of the Code did not impose constraints on commercial parties with respect to their participation in the consultation machinery. He observed that it was important to avoid rigidity

and hence article 11 should stand unaltered. Furthermore, he drew attention to the second paragraph and stated that collective consultations including Governments or appropriate authorities should not take place as they would constitute a new forum for commercial parties. However, Governments could facilitate consultation through contacts with commercial parties, thus playing the role of "honest broker". There would be no way to incorporate such guidelines or to exert pressure on commercial parties.

176. The spokesman for the Group of 77 (Côte d'Ivoire) noted that Group B viewed the role of Governments from a different perspective. His Group considered that Governments had a very important role to play in the implementation of the Convention if it was to function effectively.

177. The spokesman for Group B (Germany) recalled the deliberations in Committee I and stated that the Group of 77 had proposed amendments concerning certain provisions of the Code but in the text under consideration had proposed a more flexible deadline.

178. The spokesman for the Group of 77 (Côte d'Ivoire), in reference to deadlines mentioned in 3 (c) of TD/CODE.2/L.5, stated that they were elements which related to the operational section of the Code. Guidelines were not equally binding but implied a moral obligation and were more flexible.

179. The spokesman for Group B (Germany) questioned the necessity of guidelines as proposed by the Group of 77 and stated that the existing provisions in article 14, paragraph 4, of the Code were flexible. As for different time periods, he called for clarification on whether earlier time-limits would be possible under the guidelines.

180. The spokesman for the Group of 77 (Côte d'Ivoire) recalled that the subject matter at issue was part of an operational aspect of the Convention. In reference to Group B's statement, he said that the flexibility of article 14 applied only to general freight rate increases and not the imposition of surcharges and changes in currency adjustment factors. He noted that the proposed guidelines were flexible and intended to accommodate existing practice. However, agreements on shorter time-limits could not be concluded between the parties involved even if deemed necessary. He recalled the mandate of the Review Conference and stated that the proposals would promote better understanding and reduce ambiguity of the Code.

181. The spokesman for Group B (Germany) noted with interest the statement of the Group of 77 regarding time-limits, saying that it would be of interest to his Group if shorter deadlines could be achieved. In reference to paragraph 3, subparagraphs (c) and (d) of TD/CODE.2/L.5, he stated that the inclusion of "appropriate authority" would be unacceptable.

182. The spokesman for the Group of 77 (Côte d'Ivoire) noted that flexibility was being interpreted differently by Group B. He stated that with respect to time-limits, his Group was asking for an extension of time-limits to take into account the practical difficulties in implementation; any proposal to shorten time-limits would be meaningless.

183. The spokesman for Group B (Germany) recalled that his Group had expressed disagreement in Committee I with respect to the proposed amendments to the relevant articles of the Code, and reaffirmed that Group B was not in a position to offer extensions of time-limits.

184. The representative of the USSR noted that government monitoring of implementation of the provisions of the Convention (TD/CODE.2/L.3, para. 3 (e)) should be viewed in the context of articles 6, 11 and 47 of the Convention which solved the matter fully. Hence paragraph 3 (e) of the proposed guidelines could be deleted altogether.

185. The spokesman for Group B (Germany) expressed agreement with the proposal of the USSR and stated that in many countries under company law the only directions given were from owners, shareholders, and management. For this reason the guideline would not work.

186. The spokesman for the Group of 77 (Côte d'Ivoire) affirmed that a State as a Contracting Party had rights and obligations and could give guidance to commercial parties because it was the duty of States to ensure the effective implementation of the Convention. Furthermore, any State had the right to regulate any economic activities having an impact within its territory. In this context the State, as a Contracting Party, may give directions, if necessary, to shipping lines, shippers' organizations and others in order to ensure the effective implementation of the Convention. He affirmed that article 47 of the Convention was the relevant one and not articles 6 or 11, as stated earlier by the representative of the USSR.

187. The representative of the USSR stated that monitoring was already provided for in the Convention. While amendments could be envisaged, the one proposed was not clear.

188. The spokesman for Group B (Germany) supported this view, reiterating that his Group could not agree to the proposal. If a shipping company or any other commercial party were involved in an activity under the Convention, it was the responsibility of the Government concerned to assure implementation of the Convention, not that of another State to which the commercial party was not subject. No foreign State could direct a company subject to private law within another State.

189. The spokesman for the Group of 77 (Côte d'Ivoire) referred to the statement by Group B and sought clarification on this point as to whether a State could not give directions to a foreign private company.

190. The spokesman for Group B (Germany) responded, stating that if the performance of commercial parties under provisions of the Code did not fulfil legal requirements, the State encountering the malfunction would have to address the State which had imperfectly implemented the provisions of the Code into its national legislation.

191. The spokesman for the Group of 77 (Côte d'Ivoire) took note of this statement, saying that from this it clearly followed that it was the State that implemented the provisions of the Code in recognition of its sovereign

engagements. Furthermore, each State had the right to regulate all activity which produced effects within its territory. Indeed this was a generally recognized principle of international law.

192. The spokesman for Group B (Germany) quoted article 47, paragraph 1 whereby "Each Contracting Party shall take such legislative or other measures as may be necessary ...". If a Contracting Party did not fulfil its obligations, a third State could address the Contracting Party concerned and call for it to fulfil its contractual duties.

193. The spokesman for the Group of 77 (Côte d'Ivoire) in conclusion stated that there was nothing in the Convention to say that a State had no right to regulate the activities of commercial parties within its territory and emphasized that this point could not be contested.

CONSIDERATION OF PROPOSALS FOR AMENDMENTS TO THE CONVENTION

(Agenda item 11)

194. The Chairman brought the Committee's attention to agenda item 11 and introduced the proposal of the Group of 77 (TD/CODE.2/L.6) entitled "Amendments to the United Nations Convention on the Code of Conduct for Liner Conferences", as relevant to the work of Committee II.

195. The spokesman for the Group of 77 (Côte d'Ivoire) said that the proposed amendment to the definition of a national shipping line took into account technological developments which had resulted in bigger ships and had made the industry more capital-intensive. The object of the amendment was to enable national shipping lines working on the basis of either slot or space chartering to be recognized as national shipping lines under the terms of the Convention. In this way a line operating on the basis of slot or space chartering vessels could not be refused recognition by a conference under the pretext that it did not fulfil the conditions to qualify as a national shipping line under the Code. The amendment was a technical adjustment that would better reflect the actual situation and current practice in liner shipping. As concerned recognition by the appropriate authority, he recalled that this had already been included in the Code.

196. The spokesman for Group B (Germany) said that the proposal was not an amendment to an existing provision but a new provision. The new text omitted the link which a carrier had with its home country or the flag country of its ships so that effective control in that country would be completely lost. Furthermore, the proposed definition referred to rights of participation in freight and volume of cargoes. It was not clear why the proposed definition included possibilities of slot and space chartering. It was the view of Group B that the definition of a national shipping line in the new proposal would completely change the meaning.

197. The representative of USSR said that his country fully endorsed the essential element of the proposed definition, that is, that a national shipping line must be a vessel-operating carrier. He believed that the link with the overall economic development of a country and a national shipping

line was significant. It was important for a country to spend less on freight and acquire experience which would help it to develop its economy and fleet but in the proposed definition, unlike the existing one in the Convention, criteria concerning the link between the national shipping line and the national economy were not provided for. His country could not subscribe to an approach separating these elements. Hence, the proposed definition as a whole was not acceptable.

198. The spokesman for the Group of 77 (Côte d'Ivoire), referring to recognition by the appropriate authority, said that he had not invented this concept and that it was contained in the Code. In this context, he indicated that: "A national shipping line of any given country is a vessel-operating carrier which has its head office of management and its effective control in that country and is recognized as such by an appropriate authority of that country or under the law of that country." Thus recognition by the appropriate authority was a concept contained in the Convention. He reiterated that his Group had introduced the concept of "operating with its own vessels or on charter, either wholly or partially" to provide for the possibility of recognizing as a national line those carriers which use only parts of vessels' space when there was insufficient cargo to employ an entire ship. This was common practice in all countries and enabled carriers to honour their commitments vis-à-vis shippers. As for how the proposed amendment would affect ship registration rules, there should be no problem, as space chartering operations had no effect on the registration of the ship.

199. The spokesman for Group B (Germany) said it was clear that the Group of 77 wanted to include the possibility of companies only operating ships with space or slot charters to be recognized as national shipping lines. A company operating ships in this restricted sense might not have a management office in the country concerned. The proposed text made no mention of the "law of that country" and the reason for this omission was not clear. For example, in Germany, national shipping lines were recognized by the law of the country.

200. The representative of the USSR reiterated reasons supporting the view that there must be an economic link between the national economy and the national shipping line. In any country, including developing countries, any weakening of this link would be detrimental to both.

201. The spokesman for the Group of 77 (Côte d'Ivoire) said that there was no desire to drop the idea of a head office or effective control in the country of the national shipping line. The original wording of the Code could therefore be restored on this point. Moreover, recognition could be by an appropriate authority or by the law of the country concerned. The Group's concern had been to take into account the technical possibilities of working through chartering, which had increased since the 1970s, and to ensure that a company operating on a slot or space chartering basis could be recognized as a national shipping line.

202. The representative of China said that his country was of the opinion that companies operating whole or partial chartering could be recognized as national shipping lines because this practice was in conformity with the interest of developing countries to build up their national shipping

industry. China had no difficulty in accepting the proposed definition on this point. However, the previous definition was clearer because it recognized that the head office and effective control must be based in the country to which the national shipping line belonged. This was why the previous wording should be maintained.

203. The spokesman for Group B (Germany) agreed that on the point under discussion a small amendment would do. However, the lack of reference to conferences was a concern. His Group could only accept the proposed new definition if there were a clear indication that only conference cargoes were concerned. As for companies operating space and slot chartering, they were not shipping companies in the conventional sense because their investments and risks were slight. His Group could not see how the entry requirements for conference membership could be satisfied, therefore. Moreover, some companies might even be tempted to take maximum profits and sell their rights to vessel-operating shipping lines. Group B was not in agreement that space or slot chartering companies could be regarded as national shipping lines.

204. The spokesman for the Group of 77 (Côte d'Ivoire) said that companies using space or slot charters issued their own bills of lading, a practice which made the company responsible for the cargo; the legal regime vis-à-vis the customer was that of the carrier issuing the bill of lading and not that of the performing carrier. Not only did the practice of chartering exist but it was, moreover, recognized by the Code, which stipulated in article 2, paragraph 11 that "shipping lines members of a conference shall be entitled to operate chartered ships to fulfil their conference obligations". The recent development of slot or space chartering was an extension of the practice of vessel chartering. The proposal of the Group of 77 was intended to recognize an existing practice which allowed for the realization of economies of scale and for making optimum use of vessel space.

205. With reference to the proposed amendment to article 11, paragraph 1 on consultation machinery, the spokesman for the Group of 77 pointed out that only the words "where applicable, at both ends of the trade" had been added; nothing else had been changed.

206. The spokesman for Group B (Germany) stated that article 11 as it stood avoided arbitrary elimination of subjects. It did not afford primacy for receivers or shippers at either end of the trade. He suggested that the proposed amendment would lead to rigidities. Under the current article commercial parties were not constrained to initiate consultations with other commercial parties and were free to find suitable solutions in all cases.

207. The spokesman for the Group of 77 (Côte d'Ivoire) did not see why adding "at both ends of the trade" should lead to increasing rigidity in comparison with the text of article 11, paragraph 1. The addition was merely indicative and would even increase flexibility.

208. The representative of China stated that he considered the new text reasonable. The addition did not affect the original text because substantive changes would not occur and thus China could accept the amendment without difficulty.

Chapter III

PROCEEDINGS OF THE CLOSING PLENARY MEETING

A. Reports of the First Committee and the Second Committee

209. At the 11th (closing) plenary meeting, on 7 June 1991, the President recalled that, at the meeting of the General Committee held on 3 June 1991, the spokesman for the Group of 77 (Côte d'Ivoire) had tabled the following draft proposals on agenda items 10 and 11 on behalf of the States members of the Group of 77:

- "Guidelines to be observed with regard to the working and implementation of the United Nations Convention on a Code of Conduct for Liner Conferences" (TD/CODE.2/L.5)

- "Amendments to the United Nations Convention on a Code of Conduct for Liner Conferences" (TD/CODE.2/L.6).

On the basis of the two proposals submitted by the Group of 77, the General Committee had decided on a detailed allocation of issues to be considered in each of the two main Committees.

Action by the Review Conference

210. At the same plenary meeting, the Review Conference took note of the report of the First Committee (TD/CODE.2/C.1/L.2 and Add.1-2) and the report of the Second Committee (TD/CODE.2/C.2/L.2 and Add.1-3) and agreed that the two reports be incorporated as an integral part of the report of the Conference (see chap. II above).

B. Consideration of final documents and resolutions

(Agenda item 12)

211. Also at the closing plenary meeting, the President introduced a draft resolution under agenda item 12 which he had submitted as a result of informal consultations in the Contact Group of the President and in the drafting group. He explained that, owing to lack of time, the draft resolution was being circulated to the meeting in English only, but that the text of the resolution would subsequently be issued in all languages as an official document of the Conference (cf. TD/CODE.2/11).

Action by the Review Conference

212. At the same meeting, the Review Conference adopted the draft resolution submitted by the President under agenda item 12. (For the text of the resolution as adopted, see annex I below).

213. The Review Conference noted further that the draft proposals submitted by the Group of 77 in TD/CODE.2/L.5 and TD/CODE.2/L.6 were superseded by the resolution just adopted but that they would be annexed to the report of the Conference as documents that had been formally submitted on behalf of the Group of 77. (See annex II below).

214. The representative of Saudi Arabia, referring to rule 52 and rule 53, paragraph 1, of the rules of procedure of the Review Conference, objected to the fact that the closing plenary meeting was taking place without interpretation and that he was thus compelled to work in languages other than Arabic. His delegation had been invited to participate in the Conference in normal conditions of organization. Therefore, although he was officially representing the Government of Saudi Arabia, his participation in this meeting did not indicate that he considered the meeting to be official. Interpretation into Arabic was essential to enable him to follow the discussions properly.

215. With regard to the resolution just adopted by the Review Conference, he observed that the text had been available for negotiation in English only. His delegation had understood that the draft resolution would be presented to the plenary for discussion and had asked for the text to be available in Arabic. His delegation was now being asked to approve a text which was not available in its own language.

216. He recalled that the draft resolution had been regarded as a compromise text, elaborated on the basis of the draft proposals submitted by the Group of 77 and the informal texts submitted by the President. His delegation had studied the text carefully and was in broad agreement with the guidelines contained therein. However, he considered that the resolution was not yet an official document because it had not yet been issued in all the official languages of the Review Conference. Accordingly, while Saudi Arabia could go along with the adoption of the resolution, it would reserve its final position pending the availability of the text in Arabic.

C. Future Review Conferences

(Agenda item 13)

217. The President stated that this agenda item was covered by paragraph 10 of the resolution just adopted by the Review Conference, which referred specifically to the convening of the next Review Conference.

D. Closing statements

218. The spokesman for Group B (Netherlands) stated that, while his Group had agreed to the resolution just adopted by joining the consensus, he wished to place on record Group B's well-known position on a number of points. As stated several times during the Review Conference, Group B maintained the view that the Convention applied only to liner conferences serving contracting parties, and the Convention and resolution 2 of 1974, in his Group's opinion, formed an integral part of the Final Act. His Group had clearly indicated why it could not agree to any regulative measures concerning non-conference shipping lines. Group B countries exempted liner conferences from the full impact of their cartel legislation because they believed that a conference system was essential to enable shipowners to provide shippers regular and efficient services at relatively stable freight rates. Without the conference system, that might not be possible. As a counterbalance to that exemption shippers were not and must not be denied either the option of choosing between conference and non-conference operators or competitive access to cargoes.

Conference lines must be required to face competition from non-conference operators. Any attempt to restrict the competition provided by non-conference lines would inevitably lead Group B countries to review the possibilities available to them in order to maintain competition and preserve an economic and efficient liner shipping system.

219. These considerations had led Group B to the guiding principles which it had maintained throughout the Review Conference, namely:

(a) The present scope and fundamental objectives, as well as the basic principles of the Code of Conduct for Liner Conferences, should remain unchanged;

(b) The work of the Review Conference was to concentrate on the working and implementation of the Convention, as agreed in the "Gentleman's Agreement";

(c) The fundamental nature of the Code should not be changed, including the rights and obligations of third countries' shipping lines as set out in chapter II of the Convention.

220. He recalled that Group B, for policy and legal reasons, attached great importance to keeping open trades and open markets. Bona fida non-conference lines must have access to cargoes and shippers' choice must be preserved.

221. Another essential point stated by Group B during the Review Conference was the element of self-regulation and flexibility. In the opinion of his Group, these two concepts could never be jettisoned.

222. The spokesman for the Group of 77 (Côte d'Ivoire) recalled that he had stated very clearly in his opening statement the position of his Group on the review process for the Code of Conduct. The proposals for guidelines and for amendments to the Convention which the Group of 77 had submitted in TD/CODE.2/L.5 and TD/CODE.2/L.6 (cf. annex II) set out in detail his Group's views on all the important issues on the Conference agenda. At this stage, he wished to reiterate his Group's genuine concern with regard to the magnitude and pace of the technological and structural changes affecting world shipping as well as the need for the international community to take measures that would promote the full achievement of the principles and objectives defined in the Code notwithstanding the importance of these changes. The Group of 77 had suggested amendments and guidelines aimed at solving the specific problems linked to the development of multimodal transport services, transhipment and maritime consortia, as well as to the definition of the concept of "national shipping company", the membership of the conference, the consultation mechanism and compulsory international conciliation. His Group had also dealt with questions arising from the modalities for implementation of the Code, in particular participation in the trades, the scope of application of the Convention and the role played by Governments in the implementation of the Convention.

223. He reiterated that the proposals set forth in TD/CODE.2/L.5 and TD/CODE.2/L.6 reflected his Group's concerns on all these matters. In essence, the Group of 77 took the view that the relevant provisions of the Code applied to the whole range of regular line cargoes generated by the

developing countries' foreign trade; that Governments had rights and obligations under the Code; and that each Government was entitled to regulate any activity which affected its territory, including - as had been established by the Group of 77 in 1974 - the right when necessary to regulate the activities of non-conference lines.

224. Unfortunately, the Review Conference had not been able to reach agreement on these matters, which were vital to the development of the developing countries' fleets and to the control of their shipping trade. The Group of 77 had had to accept a compromise which, although it did not meet fully its hopes or the extent of its needs, did have a few positive features. Thus the resolution just adopted reaffirmed the validity of the Code of Conduct as a flexible and widely accepted international legal instrument which continued to govern shipping relations between countries and between suppliers and users of shipping services. It also took into account, through the guidelines which it contained, some of the recent technological developments in regular line shipping. Nevertheless, the results achieved by the Review Conference fell far short of the hopes expressed by his Group at the outset of the Conference. Yet the Group of 77 remained confident and looked forward to pursuing in UNCTAD, together with the other regional groups and China, the dialogue begun at the Conference with a view to exploiting to the utmost the opportunities which might be offered by the Code in future to the developing countries, to their shipping companies and to their shippers.

225. In this connection, and with regard to the questions left pending, the Group of 77 attached particular importance to the role of Governments in the search for a balance between the interests of shippers and those of suppliers of shipping services, between the interests of the trading partners and the needs of the fragile economies of the developing countries. Likewise, his Group wished to seek, together with all its partners and in the light of the specific features of each trade and of the individual needs of all countries, the most appropriate solutions for putting into practice the full scope of application of the Convention in an agreed manner and to the mutual benefit of all parties.

226. The representative of China expressed his delegation's satisfaction at the success of the Review Conference. After hard and difficult negotiations, the Conference had adopted a resolution which would surely lay a sound basis for the good working and effective implementation of the Convention in the future. In accordance with the main tasks set for the Conference - i.e. considering the working and implementation of the Convention - the Chinese delegation had done its utmost to contribute to the success of the Conference.

227. The representative of the Union of Soviet Socialist Republics expressed his country's satisfaction that the Review Conference had adopted by consensus a resolution substantially contributing to a normal working and implementation of the Convention on a Code of Conduct for Liner Conferences. The Review Conference had faced the extremely complex task of reconciling different interests. On the one hand, there had been attempts to broaden the scope of application of the Convention, which would have weakened its universality since some countries could no longer be contracting parties to the Convention if it were modified in that way and some other countries might change their positive decision towards acceding to the Convention. On the other hand,

there had been a clear-cut desire to maintain the scope of application of the Convention without making radical changes. A similar conflict of approaches had applied to the role of governments, to the definition of "national shipping company", and so on. However, the participants had found ways of marrying their divergent interests - a sure sign that good will and a desire to cooperate had made possible solutions which, in other circumstances, would have been unrealistic.

228. One important aspect of the Review Conference had been the recognition that the Convention as a whole had not lagged behind the times but continued to express the strategy of all groups of countries in the field of liner conference shipping. He believed that in future the Convention would be treated as a flexible international instrument that ensured conditions for equitable and mutually beneficial participation in the liner conference trades of fleets belonging to all the interested countries. The Soviet Union hoped that, in the wake of the Review Conference, any attempts to broaden the scope of application of the Convention to cover non-conference lines or the carriage of all foreign-trade cargo would be negligible or disappear altogether, and that resolution 2 adopted by the Conference of Plenipotentiaries in 1974 would be taken into account in all cases. Moreover, his country took the view that increasing the role of governments beyond the limits provided for by the Convention and speculative participation in international shipping of non-vessel-operating companies were practices that should not exist.

229. He felt that certain lessons should be drawn from the Conference by the UNCTAD Shipping Division. In his view, the secretariat should hold more meaningful consultations with governments, not only on procedural but also on substantive matters. Taking into account the various positions of countries and groups of countries, the secretariat should show more responsibility when tackling all the questions of interest to States members of UNCTAD.

230. On behalf of the Secretary-General of UNCTAD, the Director of the Shipping Division drew attention to the text of a closing statement by the Secretary-General which had been circulated to the Review Conference in English. The substance of the Secretary-General's statement was as follows:

> (1) During the opening phase of the first session of the Review Conference in 1988, serious difficulties arose with respect to one of the first items of business, namely the adoption of the rules of procedure for the Conference. Although this important issue could not be resolved at that time it has proved possible, thanks to the negotiating skills of the President and the determination of delegations and regional groups, to arrive at decisions by consensus and to proceed with the work of the resumed session.
>
> (2) Subsequently, intensive efforts were set in motion to work out a compromise solution to the problem. The process was a difficult and protracted one, but a solution was eventually achieved, the credit for which must go to all member States and delegations concerned, as well as to several individual colleagues who were closely involved in the negotiating process - in their official or in their personal capacity. Special thanks are due in this context to the members of the informal group which was constituted in Geneva and to the President, who, in

spite of his many preoccupations, found the time to participate actively in the work of this group and in the elaboration of the compromise package on the rules of procedure which made it possible for the Review Conference to reconvene at a resumed session.

(3) The Liner Code Convention, which was adopted by a Conference of Plenipotentiaries in April 1974, is of considerable historical significance to UNCTAD, as it was the first important international policy instrument in the field of shipping to be adopted under its aegis. Further, and as explicitly recognized in the resolution which the Review Conference has just unanimously adopted, the Convention now constitutes a globally accepted international legal instrument providing for a broad and flexible regulatory framework, while taking into account the special needs and problems of developing countries. It has now been ratified or acceded to by 75 States, covering a large spectrum of economic and social systems and at very diverse stages of economic development. The objectives and principles of the Code have also been widely recognized as guiding principles for global economic relations in the area of shipping. The balance of interest reflected in the Code has offered developing countries in particular the opportunity to participate on a more equitable basis in world shipping.

(4) The Convention is nevertheless a complex document: it deals with a broad range of international economic and commercial relations in liner shipping involving both governments and commercial parties such as liner conferences, shipping enterprises, shippers and shippers' organizations. It is not surprising therefore that this Review Conference has brought to light a considerable number of divergent viewpoints among contracting parties on specific aspects of the working and implementation of the Convention. Notwithstanding these difficulties, a comprehensive dialogue has taken place on all the items on the agenda of the Conference and common ground has emerged on certain issues which are reflected in the resolution just adopted.

(5) The work of the Review Conference and the results achieved need to be seen against the background of a number of fundamental structural and technological changes which have taken place in world liner shipping since the adoption of the Convention in 1974. These include the growth of containerization, which has been the driving force for the widespread development of multimodal transport operations and of integrated chains of road, rail and sea transport that have created new alternative routes competing with liner conferences. Other developments include the rapid and large-scale expansion of the activities of non-conference lines, some of which operate round-the-world services with very large containerships. There has also been an extensive process of rationalization and restructuring in most liner trades and an ongoing development of mainline and feeder port services on many routes.

(6) This background of change in the liner shipping industry was a major source of difficulty in the search for common ground on a number of issues related to the working and implementation of the Convention. The resolution just adopted nevertheless reaffirms the continuing validity of the Convention. This testifies to the flexibility incorporated in the

provisions of the instrument, but, no less important, it is also a clear expression of the common commitment to the objectives and principles set out in the Code, and to the maintenance of multilateral dialogue in the pursuit of globally accepted solutions to problems affecting the shipping and trading community as a whole.

(7) The resolution moreover addresses several specific issues which have in the past given rise to controversy in certain trades and which relate to the consultation machinery provisions of the Code, multimodal transport and slot chartering. The agreement reflected in the resolution will assist all parties involved, both governmental and private, to achieve a better understanding and a more effective implementation of the relevant provisions of the Code.

231. In his closing remarks, the President said that the results achieved by the Review Conference were probably the best that could be hoped for in the current circumstances. The review was part of an evolutionary process and there could be no question of planning a revolution when it came to commercial matters. The foundation which has been laid by the Review Conference would no doubt bear greater fruit on the occasion of future review conferences.

Chapter IV

ORGANIZATIONAL MATTERS

(a) Opening of the resumed session of the Review Conference

232. The resumed session of the Review Conference on the United Nations Convention on a Code of Conduct for Liner Conferences was opened on 21 May 1991 by the Secretary-General of UNCTAD. He recalled briefly the steps leading up to the adoption of the report of the meeting of officials of States entitled to attend the Review Conference pursuant to paragraph 5 of resolution I adopted by the Review Conference on 18 November 1988 (TD/CODE.2/9).

233. Opening statements were made by the President of the Review Conference and by the Secretary-General of UNCTAD (see Introduction).

(b) Election of the President

(Agenda item 2)

234. At its 8th (opening) plenary meeting, the Review Conference confirmed Mr. L.M.S. Rajwar of India as independent President of the Conference.

(c) Replacement of officers

235. At its 9th plenary meeting, on 23 May 1991, the Review Conference elected Dr. Walid Abdel-Nasser (Egypt) as Rapporteur, to replace Mr. Boniface Pagawagnaba (Côte d'Ivoire).

236. At the same meeting, the Review Conference completed the election of its 14 Vice-Presidents under rule 6 of the rules of procedure by electing the following countries: Canada; Japan; Union of Soviet Socialist Republics (to replace the former German Democratic Republic).

237. Accordingly, the 14 countries which served as Vice-Presidents of the Review Conference were as follows: Bulgaria; Canada; China; Denmark; France; Indonesia; Japan; Kenya; Morocco; Norway; Saudi Arabia; Trinidad and Tobago; Union of Soviet Socialist Republics; and Uruguay.

238. At its 9th and 10th plenary meetings, the Review Conference elected the Chairmen of the First Committee and the Second Committee as follows:

Chairman of the First Committee:	Mr. Hector K. Villarroel (Philippines) (to replace Mrs. Christine Girndt of the former German Democratic Republic)
Chairman of the Second Committee:	Mr. Tony Fortnam (United Kingdom of Great Britain and Northern Ireland) (to replace Mr. Hans de Jong of the Netherlands).

(d) Agenda for the resumed session of the Review Conference

239. The agenda for the resumed session of the Conference was the same as that adopted by the Review Conference in 1988 (TD/CODE.2/6). The agenda for the resumed session therefore read as follows:

1. Opening of the Conference

2. Election of the President

3. Adoption of the rules of procedure

4. Election of other officers

5. Adoption of the agenda

6. Organization of the work of the Conference

7. Credentials

   (a) Appointment of a Credentials Committee;

   (b) Report of the Credentials Committee

8. General review of the implementation and the working of the Convention

9. Consideration of specific issues relating to the Convention and its implementation:

   (a) Technological and structural changes in world liner shipping;

   (b) Scope of application;

   (c) Reservations;

   (d) Modalities of implementation;

   (e) Non-conference lines;

   (f) Resolution No. 3 on local conciliation;

   (g) Other issues

10. Consideration of possible guidelines relating to the interpretation and the implementation of the provisions of the Convention and of possible recommendations concerning the activities of non-conference lines

11. Consideration of proposals for amendments to the Convention

12. Consideration of final documents and resolutions

13. Future Review Conferences

14. Any other business

15. Adoption of the report of the Conference and of final documents and resolutions

16. Closure of the Conference.

(e) Organization of the work of the Conference

(Agenda item 6)

240. To assist it in the organization of the work of its resumed session, the Review Conference had before it a note by the UNCTAD secretariat entitled "Supplementary annotations to the agenda and suggestions for the organization of the work of the resumed session of the Conference" (TD/CODE.2/8).

241. At its 10th plenary meeting, on 27 May 1991, the Review Conference, having noted the outcome of the President's informal consultations with regional coordinators and China, decided that the First Committee and the Second Committee would remain as constituted by the Review Conference in 1988 and that they would deal with the items allocated to them in 1988. Accordingly, the allocation of work was as follows:

First Committee

Item 9: Consideration of specific issues relating to the Convention and its implementation:

(b) Scope of application

(c) Reservations

(e) Non-conference lines

Item 10: Consideration of possible guidelines relating to the interpretation and implementation of the provisions of the Convention and possible recommendations concerning the activities of non-conference lines

Item 11: Consideration of proposals for amendments to the Convention.

Second Committee

Item 9: Consideration of specific issues relating to the Convention and its implementation:

(a) Technological and structural changes in world liner shipping

(d) Modalities of implementation

(f) Resolution No. 3 on local conciliation

(g) Other issues.

The Second Committee was also asked to consider agenda items 10 and 11 as they related to the work of the Committee.

(f) Adoption of the rules of procedure

(Agenda item 3)

242. At the 9th plenary meeting, on 23 May 1991, the President drew attention to the revised provisional rules of procedure for the Review Conference, together with a declaration incorporating a "Gentleman's Agreement" on the mandate of the Review Conference and the text of a supporting statement by the Senior Legal Adviser of UNCTAD to be placed on record in connection with that declaration, which had been approved and recommended for adoption to the resumed session of the Review Conference by a meeting of representatives of participating States held in Geneva on 5 March 1991 (TD/CODE.2/2/Rev.1).

243. The Senior Legal Adviser read out the statement appended to the revised provisional rules of procedure, as follows:

"Article 52, paragraph 1, of the Convention states that:

> 'A Review Conference shall be convened by the depositary five years from the date on which the present Convention comes into force to review the working of the Convention, with particular reference to its implementation, and to consider and adopt appropriate amendments.'

"The Conference in carrying out its mandate as elaborated above, should give attention to the meaning of the words 'review', 'working', 'implementation' and 'appropriate amendments', which in the view of the secretariat set the scope of the work of the Review Conference and the manner in which it should be carried out."

244. The representative of Côte d'Ivoire stated that, as the Review Conference on the United Nations Convention on a Code of Conduct for Liner Conferences prepared to adopt its rules of procedure, his delegation wished to pay tribute to the President and to the Secretary-General of UNCTAD for their unceasing efforts since 18 November 1988 to make sure that the Review Conference resumed on a basis acceptable to plenipotentiaries. He observed, however, that while the procedure called for in the resolution on resumption adopted by the Review Conference had been followed during the first phase of informal consultations, those held within the Group of Six, the same had not been true of the consultations held following the Group B initiative, i.e. the informal meetings of July and November 1990. Even if some States had been represented, all the States which had adhered to the Code should have been notified of the outcome of the informal meetings so that they could make comments as appropriate. That had not been the case. Likewise, the procedure adopted on 18 November 1988 had not been followed either in calling the meeting of senior

officials or in the resumption of the Conference itself. His delegation found that a number of procedural flaws had marred the adoption of the rules of procedure, not to mention a wide variety of methods and pressures. Consequently, Côte d'Ivoire could not go along with these rules of procedure and was entering a reservation as to their adoption. This position was in keeping with the Vienna Convention on the Law of Treaties, and had not changed since the question of non-contracting parties participating in the Review Conference with the right to vote had first been raised.

245. Côte d'Ivoire believed that the Convention on a Code of Conduct for Liner Conferences could be revised only by the parties which had adopted and applied it and gained some experience in its application and operation. Having developed its merchant marine thanks to the Code of Conduct, Côte d'Ivoire could not agree to forfeit the benefits as a result of undesirable interference in its revision by non-contracting parties. It would, on the other hand, be willing to accept unconditionally any rules of procedure which allowed the vote to the contracting parties alone, in accordance with article 39 of the Vienna Convention on the Law of Treaties. In any event, Côte d'Ivoire would not be bound by any decision adopted by the Conference with the participation of non-contracting parties which adversely affected its interests or acquired shipping rights.

246. The Director of the Shipping Division, responding to the statement made by the representative of the Côte d'Ivoire, stated that the UNCTAD secretariat was ready to make available to the delegation of Côte d'Ivoire all the documents which demonstrated that the prescribed procedures had been followed as agreed upon by the meeting held in October-November 1990. He recalled that, on that occasion, when the spokesman for the Group of 77, the spokesman for Group D and the representative of China had expressed their agreement to the compromise on the revised rules of procedure and the two texts annexed thereto and when the spokesman for Group B had requested more time for reflection, the Secretary-General of UNCTAD had suggested that, if Group B returned with a positive reply concerning the provisional rules of procedure, a meeeting be held, with the participation of the representatives of permanent missions of member States in Geneva, to adopt formally the rules of procedure, taking into account the fact that the substantive discussion had been completed. The participants in the meeting and the spokesmen for the regional groups and the representative of China had agreed to that suggestion. Thereafter, the provisional rules of procedure had been approved at the meeting of representatives held on 5 March 1991 and recommended for adoption by the Review Conference.

247. In response to the clarification made by the Director of the Shipping Division, the representative of Côte d'Ivoire stated that he did not wish to enegage in polemics with the UNCTAD secretariat and that, in any event, he maintained the reservation of Côte d'Ivoire concerning the adoption of the rules of procedure. Accordingly, as far as his country was concerned, the rules of procedure would be adopted with the reservation entered by Côte d'Ivoire.

Action by the Review Conference

248. At its 9th plenary meeting, on 23 May 1991, the Review Conference, having taken note of the statement of reservation made by the representative of Côte d'Ivoire and of the response made by the Director of the Shipping Division, as well as of the maintenance of the formal reservation of Côte d'Ivoire on the adoption of the rules of procedure, adopted the revised provisional rules of procedural (TD/CODE.2/2/Rev.1). 4/

249. The spokesman for Group B (Netherlands) observed that, after protracted negotiations, agreement had now been reached on the convening of a resumed session of the Review Conference. While the Group of 77, Group D and China had agreed, despite any concerns they might have had, to the compromise proposal as submitted by the Secretary-General of UNCTAD to all groups during the two-day consultations on the rules of procedure in October/November 1990, it was no secret that Group B had had, and still had, serious reservations about subscribing to that compromise. Nevertheless, Group B had decided not to block the Review Conference, which would operate in accordance with the rules of procedure as contained in the compromise submitted by the Secretary-General.

250. Group B welcomed the fact that all interested countries, whether contracting or non-contracting States, would be able to participate in the Conference. The Code had implications for the whole world's shipping industry and those using these ocean services. Furthermore, as the Convention was an important instrument, it was particularly important to involve all interested parties. He recalled that, during the consultations in June and October 1990 on the rules of procedure for a resumed session, Group B had identified four basic issues that it considered should be part of any agreement on rules of procedure and which, in its view, were not adequately reflected in the Secretary-General's compromise proposal. He therefore wished to place on record the guiding principles which Group B countries would adhere to at the resumed session. They were:

A. The present scope and fundamental objectives and basic principles of the Code of Conduct for Liner Conferences shall remain unchanged

251. The Code established a legal framework within which liner shipping conferences should operate in trades between contracting parties. The Convention granted certain rights to liner conferences but at the same time it imposed certain obligations upon them. Proposals which attempted to widen the present scope of the Convention to cover, for example, bulk shipments, or restrict outsider activities for the purpose of preserving a share of the total trade for national and/or conference lines, or which regulated non-conference shipping lines operating on a commercial basis, would be rejected by Group B.

252. He recalled that, under existing legislation in Group B countries, liner conferences were expected to be subject to counter-balancing forces which included non-conference shipping lines, strong shippers, and shippers' councils. Any attempt to restrict competition provided for by non-conference lines would lead Group B countries to review possibilities to maintain such competition in order to preserve an economic and efficient liner shipping

system. In addition, any such restriction or regulation was unacceptable to Group B countries owing to other existing international legal obligations which these countries had entered into on the basis and in the light of the regulatory framework which the Convention provided for. Such obligations had been established within the framework provided by the limited scope of application of the Convention. Any extension of the scope to cover non-liner shipping was totally unacceptable. Group B's opposition to regulating shipments other than liner conference shipments was well known. As the conclusions and recommendations of the groups of experts in these fields had shown, the principles governing the carriage of cargo in the tramp trades, reefer, dry bulk carrier, oil tanker, gas carrier and chemical carrier trades alike were not the same as those governing liner conference shipping and Group B could not accept any intervention in the existing market mechanisms in these trades.

253. The Code, in contrast to other multilateral maritime instruments, not only afforded economic rights to the national lines of contracting parties at each end of the trade, but also affected the participation of the shipping lines of other countries. It followed that all countries, both contracting and non-contracting parties to the Code, had an economic stake in the Code and the manner of its implementation. Group B was convinced that these rights should not be reduced, nor obligations made more onerous, during the Review Conference. Such interference would harm the further liberalization of world shipping, and in turn create barriers to the expansion of global trade and shipping. Any change to the Code to alter its basic purpose and scope would create a different multilateral instrument which would require consideration at a conference at which there was equal participation of all States. The voting rules for this Review Conference did not allow that equal participation.

B. The work of the Conference should concentrate on the working and implementation of the Convention

254. Group B was looking forward to considering, together with the other groups, amendments of a technical and operational nature, but it rejected, as stated above, the consideration of all other amendments going beyond working and implementation.

C. The fundamental nature of the Code shall not be changed by amendments or otherwise, including the rights and obligations of third-country shipping lines as set out in chapter II of the Code

255. By virtue of being a member of a conference in a trade covered by the Convention, a shipping line assumed rights and obligations under the Convention, regardless of whether or not the country of that conference line was a contracting party to the Convention. Group B firmly believed that, in the light of the long drawn-out legislative history of the Convention, the status quo of such lines under the Convention needed to be preserved.

D. The outcome of the Conference's deliberations on various issues should be reflected in documents such as guidelines or memoranda

256. The rationale for this fourth and last point was simple: any conclusions should be properly documented for ready reference and uniform implementation and interpretation by contracting parties.

257. He stated that the above four essential principles were the bottom line for Group B and were not subject to negotiation or further compromise. His Group believed that there should be no misunderstanding about its attitude during the Conference. It was the intention of Group B to contribute to a thorough and productive Review Conference, and to the reaching of conclusions through consensus for the mutually beneficial expansion of shipping and trade of all countries. Group B would not be able to cooperate if these four essential principles were not adhered to. Within these parameters Group B would join other Groups and China in a full and open discussion of the working and implementation of the Convention. In this respect, he also referred to TD/CODE.2/9 containing the report of the meeting of officials of States entitled to attend the Review Conference, pursuant to paragraph 5 of resolution I adopted by the Review Conference on 18 November 1988.

258. The representative of the United States of America stated that the United States opposed the Code of Conduct for Liner Conferences. Restrictions currently embodied in the Code were incompatible with United States laws providing for open conferences, and also with efficient transportation services at competitive prices. The United States believed that regulation of liner conference trades subordinating the free and open access to international shipping trades was contrary to the desire it shared with all participating countries for increased international trade and economic development.

259. The United States noted that carriers of most participating Governments were free to participate in and benefit from the open international trades of the United States, including United States crosstrades, either as conference members or as non-conference participants. The United States welcomed movements by many countries toward market-oriented, competitive liberalizations of maritime and intermodal transport, and port and related maritime services. The United States believed these new approaches were being taken in the light of the fact that other approaches, based on restriction and non-market allocations, had failed to yield progress. Burdensome administrative procedures and cargo allocation schemes that showed little regard to the needs of shippers and the market did not encourage the development of efficient, price-competitive means to move a countries' international trade.

260. Nevertheless, some countries had not hidden their desire to change the basic scope and nature of the Code, reducing still further the choice of shippers engaged in international trade. A variety of amendments being suggested for the Code would directly affect the interests of countries that, like the United States, were not contracting parties.

261. The United States had actively participated in efforts to establish rules of procedure for the Review Conference that met the concerns of all sides. The United States did not believe the rules as proposed adequately protected the interests of non-contracting States. In the course of the resumed session, the United States delegation looked forward to working with all parties interested in ensuring an opportunity for carriers of all countries to participate in open maritime trades, and in developing efficient, innovative maritime services at competitive market prices to meet the objectives of economic growth and expansion of trade.

262. The spokesman for the Group of 77 (Côte d'Ivoire) reaffirmed his Group's attachment to the objectives and principles laid down in the United Nations Convention on the Code of Conduct for Liner Conferences as an instrument for development and as a regulatory and flexible framework in facilitating the orderly expansion of world seaborne trade through the development of efficient and rational shipping services, fair cargo-sharing and the consideration of the interests of the various States as well as those of shippers and suppliers of shipping services.

263. The Group of 77 felt that the Review Conference on the United Nations Convention on a Code of Conduct for Liner Conferences should review the working and implementation of the said Convention in relation to its objectives and principles and examine whether these objectives and principles had been achieved. It should also examine the factors which had prevented or hindered their full achievement, taking into account the profound changes in international maritime transport following the decline of liner conferences, the increase of activities of non-conference lines, technological and structural developments in shipping and port activities, as well as the shortcomings inherent in the Convention itself.

264. The Review Conference made it possible to overcome the weaknesses observed in the working of the Code, to clarify the meaning of terms and expressions used, to iron out the differences between the Contracting Parties and to adopt appropriate amendments and other appropriate instruments in accordance with the provisions of paragraph 1 of article 52 of the Convention and the Gentleman's Agreement reached in November 1990.

265. The importance of the Code for developing countries must be considered not as a separate element but as part of a set of policies in the area of shipping having other important legal instruments, with the same objectives and under the control of UNCTAD, which covered the registration of ships, multimodal transport operations, standard maritime regulations and the financing of the acquisition of ships, etc.

266. The Review Conference should examine to what extent and in what way new developments in liner shipping since the adoption of the Code - such as containerization and multimodal transport, round-the-world services, shipping consortia - had affected the working and effective implementation of the Convention. Some definitions and specific articles of the Convention might be revised so as to take into account such developments.

267. The Group of 77 reaffirmed the right of shipping lines of developing countries to carry a fair share of not less than 40 per cent of cargo generated by their foreign trade as well as their right to participate, as shipping lines of a third-country, in trades other than their own trades. The Group of 77 underlined the right of developing countries to take all the legislative, regulatory and administrative measures as regards the sharing of traffic, trade transactions and the responsbility of States as signatories and guarantors of the provisions of the Code. The assurance of a just participation in trade was a vital necessity for the development of the developing countries' merchant fleets as well as for the viability of their transport industries.

268. Having noted that the main obstacle for the harmonious implementation of the Convention had been the considerable increase in the share of cargo carried by non-conference lines, the Group of 77 maintained that the Convention recognized the sovereign rights of States to control the activities of non-conference lines and to use bilateral agreements as an adequate means of ensuring fair cargo sharing. Moreover, the Group of 77 considered that the extension of the principle of the sharing of the trade to liquid and dry bulk transportation could help to render international maritime relations more just by enabling developing countries to reduce their technological gap and to get closer to the objective of equitable and substantial participation in world tonnage.

269. As for land-locked developing countries, the international maritime community should see to it that these countries used their traffic rights by transporting their goods through their own shipping lines or through relevant agreements and should take into account their specific characteristics in the fixing and implementation of freight rates.

270. The Group of 77 was convinced that the Convention offered real prospects for international cooperation and that economic and commercial development should be in the interest of everyone and promote an improved standard of living for the people.

271. The Group of 77 considered that the Review Conference should contribute to the establishment of a more balanced maritime order which would be more respectful of the legitimate interests of all the parties concerned in an orderly development of world maritime trade. The Group of 77 wished to recall the difficult conditions in which the compromise package had been reached. It reaffirmed its attachment to the aforementioned guidelines which should not be questioned in any way so as not to jeopardize the "Gentleman's Agreement" on the mandate of the Conference. Consequently, the Group of 77 would cooperate in the Conference on the understanding that its objectives and purposes were the outcome of a broad consensus.

272. At the 10th plenary meeting, on 27 May 1991, the Senior Legal Adviser, speaking at the invitation of the President, stated that the Review Conference, at its 9th plenary meeting, had adopted by consensus its rules of procedure. The decision had been taken by consensus as none of the participants had requested a vote or expressed a fundamental objection to the adoption of the rules. On their adoption by consensus the rules of procedure applied in full to the Conference. Statements of position had been made on the occasion of the adoption of the rules. Such statements might be made, at the option of the speaker, before or after the adoption of a decision, which in this case had been the decision to adopt the rules of procedure. The timing of the delivery of such statements did not alter the validity of the decision to adopt the rules and did not change their application to the Conference. Statements reserving the position of one or more delegations were not uncommon in United Nations conferences and meetings. Such statements did not change or qualify the right of the delegations concerned to participate, with all the rights under the rules of procedure, in the Conference.

273. The representative of Côte d'Ivoire said that the statement just made by the Senior Legal Adviser had the force of counsel rather than of the rule of law. He recalled that Côte d'Ivoire had made a statement reserving its

position on the rules of procedure before the adoption of those rules and that thereafter it had confirmed that reservation. Thus the rules of procedure had indeed been adopted, but with reservations. The scope of his country's reservation had been clearly stated in its original statement of reservation: namely that, in any event, Côte d'Ivoire would not be bound by any decision adopted by the Conference with the participation of non-contracting parties which adversely affected its interests or acquired shipping rights.

(g) Reports of the main Committees 5/

274. In the course of the resumed session, the First Committee held seven meetings (4th-10th meetings). At its 10th (closing) meeting, on 7 June 1991, the First Committee adopted its draft report (TD/CODE.2/C.1/L.2 and Add.1-2), with some minor amendments, and authorized the Rapporteur to complete the report as appropriate.

275. In the course of the resumed session, the Second Committee held nine meetings (4th-12th meetings). At its 12th (closing) meeting, on 7 June 1991, the Second Committee adopted its draft report (TD/CODE.2/C.2/L.2 and Add.1-3), with some minor amendments, and authorized the Rapporteur to complete the report as appropriate.

276. At its 11th (closing) plenary meeting, on 7 June 1991, the Review Conference took note of the reports of the First and Second Committees and agreed that the two reports be incorporated as an integral part of the report of the Conference. 6/

(h) Credentials

(Agenda item 7)

(a) Appointment of a Credentials Committee

277. At its 9th plenary meeting, on 23 May 1991, and at a meeting of the General Committee, on 3 June 1991, the Review Conference, acting in accordance with rule 4 of the rules of procedure, appointed the following nine participating countries to constitute the Credentials Committee:

Algeria
China
Ireland
Niger
Republic of Korea
Trinidad and Tobago
United States of America
Union of Soviet Socialist Republics
Uruguay.

(b) Report of the Credentials Committee

278. At its 11th (closing) plenary meeting, on 7 June 1991, the Review Conference adopted the report of the Credentials Committee (TD/CODE.2/10).

(i) Attendance 7/

279. The following States members of UNCTAD were represented at the Conference: Algeria; Argentina; Australia; Austria; Bangladesh; Belgium; Benin; Brazil; Bulgaria; Burkina Faso; Cameroon; Canada; Cape Verde; Chile; China; Colombia; Congo; Côte d'Ivoire; Cuba; Czechoslovakia; Denmark; Ecuador; Egypt; Ethiopia; Finland; France; Gabon; Germany; Ghana; Greece; Guinea; India; Indonesia; Iran (Islamic Republic of); Ireland; Italy; Japan; Kenya; Lebanon; Liberia; Madagascar; Malaysia; Malta; Mexico; Morocco; Namibia; Netherlands; New Zealand; Niger; Nigeria; Norway; Peru; Philippines; Poland; Portugal; Republic of Korea; Saudi Arabia; Senegal; Spain; Sri Lanka; Sudan; Sweden; Syrian Arab Republic; Switzerland; Thailand; Togo; Trinidad and Tobago; Tunisia; Turkey; Union of Soviet Socialist Republics; United Kingdom of Great Britain and Northern Ireland; United Republic of Tanzania; United States of America; Uruguay; Yemen; Yugoslavia; Zaire; Zimbabwe. The European Economic Community was also represented.

280. The Pan Africanist Congress of Azania participated pursuant to General Assembly resolution 3280 (XXIX).

281. The following international organization was represented at the Conference: The General Agreement on Tariffs and Trade.

282. The following intergovernmental organizations were represented at the Conference: Board of the Cartagena Agreement; Ministerial Conference of West and Central African States on Maritime Transport; Organisation for Economic Co-operation and Development; Organization of African Unity; Union of African Shippers' Councils.

283. The following non-governmental organizations were represented at the Conference: General Category: International Bar Association; International Chamber of Commerce; International Confederation of Free Trade Unions. Special Category: Baltic and International Maritime Council; Council of European and Japanese National Shipowners Associations; European Shippers' Councils; International Federation of Freight Forwarders Associations.

284. The following non-governmental organization, specially invited by the secretariat, was represented at the Conference: Continent West Africa Conference.

(k) Adoption of the report of the Conference and of final documents and resolutions

(Agenda item 15)

285. At its 11th (closing) plenary meeting, on 7 June 1991, the Review Conference adopted the draft report on its resumed session (TD/CODE.2/L.4 and Add.1) and authorized the Rapporteur of the Conference to complete the final report as appropriate, to include in particular the resolution adopted by the Conference, the reports of the main Committees, and the proceedings of the closing plenary of the Conference.

Notes

1/ For the report of the Review Conference held in 1988, see TD/CODE.2/7.

2/ For the allocation of work to the First Committee, see chapter IV (e) below.

3/ For the allocation of work to the Second Committee, see chapter IV (e) below.

4/ The rules of procedure were subsequently circulated in TD/CODE.2/12.

5/ For the officers of the main Committees, see paragraph 238 above and TD/CODE.2/7, paragraphs 182 and 188. For the allocation of work to the main Committees, see section (e) above.

6/ In this connection, see also chapter III.A above.

7/ For the list of participants, see TD/CODE.2/INF.2.

ANNEXES

Annex I

RESOLUTION ADOPTED BY THE REVIEW CONFERENCE AT ITS RESUMED SESSION

Resolution II*

The Review Conference on the United Nations Convention on a Code of Conduct for Liner Conferences,

Having convened in Geneva from 31 October to 18 November 1988 and from 21 May to 7 June 1991, pursuant to article 52, paragraph 1, of the United Nations Convention on a Code of Conduct for Liner Conferences, and having reviewed the working and implementation of the Convention,

Noting that the Convention constitutes a widely accepted flexible international legal instrument, taking into account the special needs and problems of developing countries,

Noting the magnitude of technological and structural changes in liner shipping since the adoption of the Convention in 1974,

Having reached agreement on certain matters relating to the working and implementation of the Convention as reflected in this resolution,

1. Reaffirms the continuing validity of the United Nations Convention on a Code of Conduct for Liner Conferences;

2. Adopts the following guidelines:

(a) The provisions of the Convention should not be seen as excluding a shipping line which is a container slot/space-charter operator from becoming a member of a liner conference, subject to the provisions of article 1, paragraph 2, of the Convention. Article 1, paragraph 2, and article 2, paragraph 11, of the Convention should not be seen as excluding container slot-charter or space sharing arrangements;

(b) The provisions of article 2 of the Convention apply to the international sea-leg of multimodal transport services;

(c) The provisions of article 2 of the Convention apply when cargoes are carried through transshipment, including cargoes to and from land-locked countries;

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* Adopted at the 11th (closing) plenary meeting of the resumed session of the Review Conference on the United Nations Convention on a Code of Conduct for Liner Conferences, on 7 June 1991.

(d) Governments may seek consultations with one another over issues of concern arising from the implementation of the Convention;

(e) A group of national shippers or shippers' organizations from more than one country may participate in the consultations under article 11 of the Convention on behalf of national shipper interests;

(f) States Contracting Parties may take such measures as are necessary to ensure the implementation of the Convention. Such measures may include consultations involving the appropriate authorities, liner conferences, shipping lines and shippers and shippers' organizations concerned;

3. Invites all States Contracting Parties to strengthen their efforts towards the effective implementation of the Convention, taking into account its objectives and principles;

4. Calls upon liner conferences, shippers, shippers' organizations, States Contracting Parties or their appropriate authorities at the two ends of the trade to which the Convention applies to hold consultations, as and when appropriate, in order to find mutually acceptable solutions to problems relating to the working and implementation of the Convention;

5. Invites all States Contracting Parties which have not yet done so to take the necessary legislative and - as appropriate - other measures to implement the Convention, taking into account its objectives and principles and the above-mentioned guidelines;

6. Urges that the implications for the developing countries of the continuing technological and structural changes which have a bearing on the Convention be discussed between the relevant commercial parties concerned and, where necessary, Governments of States Contracting Parties, on a bilateral, subregional and/or regional basis, with a view to finding satisfactory solutions;

7. Requests UNCTAD and relevant intergovernmental organizations to continue to study these implications within the context of their programmes of work during the 1990s;

8. Requests the Registrar, appointed in accordance with article 46, paragraph 1, of the Convention, to provide, within available resources, guidance and assistance to Governments, at their request, towards a better understanding and effective implementation of the Convention;

9. Invites all States which have not yet become Contracting Parties to the Convention to consider ratifying or acceding to the Convention;

10. Requests the Secretary-General of the United Nations to convene the next Review Conference in accordance with the provisions of article 52 of the Convention;

11. Instructs the depositary to seek the views of all States entitled to attend the next Review Conference in preparing the relevant documentation for such Conference;

12. Calls upon all States entitled to attend the next Review Conference to contribute, as appropriate, to the preparation for such Conference to be undertaken by the depositary.

11th plenary meeting
7 June 1991

Annex II

DRAFT PROPOSALS SUBMITTED DURING THE RESUMED SESSION OF THE REVIEW CONFERENCE BY THE GROUP OF 77*

A. Draft proposal submitted under agenda item 10

Guidelines to be observed with regard to the working and implementation of the United Nations Convention on a Code of Conduct for Liner Conferences

Draft proposal submitted by the representative of Côte d'Ivoire on behalf of the States members of the Group of 77 (TD/CODE.2/L.5)

Preamble

The United Nations Review Conference on the United Nations Convention on a Code of Conduct for Liner Conferences, having convened in Geneva from 31 October to 18 November 1988 and 21 May to 7 June 1991 under the provisions of article 52, paragraph 1, of the said Convention, and having reviewed the working and implementation of the Convention since it came into force on 6 October 1983, has agreed on the following guidelines to be observed with regard to the implementation of the Convention.

1. Taking into account shipping consortia within definition of liner conference

A consortium** of shipping lines providing international liner services, if operating outside of a group of shipping lines which constitutes a liner conference under the definition of liner conference set out in the Convention, would in itself constitute a liner conference for the purposes of the Convention, irrespective of whether it operates under uniform or common freight rates or not.

2. Scope of application of the Convention

(a) Applicability to international multimodal transport services provided by regular shipping lines

The relevant provisions of the Convention apply to international multimodal transport services provided by conference lines and regular shipping lines. Specifically,

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* Annexed to the report by decision of the Review Conference at its 11th (closing) plenary meeting, on 7 June 1991 (see para. 213 above).

** Which is centred upon the physical operation of the fleet, i.e. ship scheduling and stowage, with members carrying each other's containers on each other's ships under mutual slot-charter arrangements, while the individual component ships of the consortium continue to be owned, crewed and husbanded by the members independently.

- cargoes carried by conference lines and regular shipping lines on multimodal transport documents or combined transport bills of lading shall be subject to the trade sharing provisions of article 2 of the Convention in so far as the international sea-leg of the transport is concerned;

- multimodal transport freight rates included in conference tariffs or in tariffs of regular shipping lines shall constitute one of the items that may be included in consultations between shippers and liner conferences or regular shipping lines under the provisions of article 11 of the Convention;

(b) Transshipment services

The national shipping lines of the countries of origin and of final destination of liner cargoes, including land-locked countries, are entitled to acquire their rightful share, in accordance with the provisions of article 2, of cargoes carried by liner conferences and regular shipping lines operating between ports which constitute transshipment ports for such cargoes.

(c) Government controlled cargoes

States Contracting Parties which are developing countries may operate schemes providing for their national shipping lines to have preferential access to government controlled cargoes, and the trade sharing provisions of article 2 of the Convention will not apply to such government controlled cargoes carried by the national shipping lines concerned.

3. Modalities of implementation of the Convention

(a) Application of the trade sharing provisions of article 2 of the Convention

The Convention recognizes that a State Contracting Party may determine that the trade sharing provisions of article 2 of the Convention shall be administered by a body, governmental or non-governmental, other than a liner conference. Such modalities shall be mutually agreed to between the States Contracting Parties at the two ends of a trade. In the absence of mutual agreement, each State Contracting Party will have the right to apply the modalities it deems appropriate in the framework of the trade concerned. In any event, the principles of trade sharing applied should comply fully with the provisions of article 2 of the Convention. The distribution of cargo shares within a group of shipping lines of the same nationality shall be determined collectively by that group.

(b) Consultation machinery

The consultations referred to in article 11 of the Convention shall apply to consultations where applicable at both ends of the liner trade concerned. Where it is in accordance with established practice, appropriate authorities may participate fully in consultations with liner conferences and regular shipping lines in a decision-making role. However, the State Contracting Party concerned should make every effort to develop representative organizations of shippers and transfer such consultation functions from the appropriate authorities to such shippers' organizations.

National shippers' organizations representing a group of countries in a region or subregion may hold consultations collectively within the provisions of article 11 of the Convention, with liner conferences serving the trade of that region or subregion.

Equally, the appropriate authorities of a group of countries representing a region or subregion may participate in or hold consultations collectively with liner conferences serving that region or subregion in accordance with established practice.

(c) Notwithstanding the provisions of article 14, paragraph 5, which provide for the matter to be submitted immediately to international mandatory conciliation in the event of no agreement being reached within 30 days of notice being given of a general freight-rate increase in accordance with article 14, paragraph 1, a more flexible deadline for the submission of a matter to international mandatory conciliation may be decided upon by mutual agreement between the liner conference, shippers' organization(s) and appropriate authority or authorities concerned.

(d) Notwithstanding the provisions of article 16, paragraph 4, and article 17, paragraphs 2 and 3, the periods of "15 days" and "30 days" referred to in article 16, paragraph 4, and the period of "15 days" specified in article 17, paragraphs 2 and 3, may be replaced by different periods by mutual agreement between the commercial parties and the appropriate authority or authorities concerned.

(e) Monitoring by Governments of the implementation of the provisions of the Convention

In accordance with the provisions of article 47 of the Convention, the Governments of States Contracting Parties may, in addition to national legislative action, take such other measures as are necessary to ensure and promote the implementation of the Convention. Such measures may include regular consultations with liner conferences and regular shipping lines involving the appropriate authorities, liner conferences, shipping lines and shippers and shippers' organizations concerned. An appropriate

authority may give such directions as are appropriate to a liner conference, a shipping line, or a regular shipping line, or a shipper or shippers' organization in order to ensure the effective implementation of the provisions of the Convention.

The States Contracting Parties or their appropriate authorities at the two ends of a trade to which the Convention applies should hold consultations as and when appropriate, in order to find mutually acceptable solutions to problems relating to the implementation of the provisions of the Convention. Where mutually acceptable solutions to problems have been found through such consultations, the States Contracting Parties concerned shall advise the Registrar appointed under the Convention of the decisions so reached. As and when appropriate the Registrar shall inform all Contracting Parties of such decisions so that other States Contracting Parties may benefit from the decisions concerned.

B. Draft proposal submitted under agenda item 11

Amendments to the United Nations Convention
on a Code of Conduct for Liner Conferences

Proposal submitted by the representative of Côte d'Ivoire
on behalf of the States members of the Group of 77

AMENDMENTS TO EXISTING PROVISIONS
(TD/CODE.2/L.6)

Part one - Chapter I - DEFINITIONS

National shipping lines

Paragraph 1 - Proposed new text:

"A national shipping line is a vessel-operating/carrier operating with its own vessels or on charter, either wholly or partially and recognized as such by the appropriate Authority of a country which has designated the said carrier to exercise, within a maritime trade, its rights of participation in freight and in volume of cargoes which form part of its foreign trade, with another country."

Chapter II - RELATIONS AMONG MEMBER LINES

Article 1 - MEMBERSHIP

Paragraph 2 - Proposed new text:

"A shipping line applying for membership of a conference shall furnish a certificate established by the appropriate authority as evidence of its ability and intention to operate a regular, adequate and efficient service on a long-term basis as defined in the conference agreement. It shall undertake to abide by all the terms and conditions of the conference agreement and shall deposit a financial guarantee to cover any outstanding financial obligation in the event of subsequent withdrawal, suspension or expulsion from membership, if so required under the conference agreement."

Paragraphs 3 to 6 remain unchanged

Article 2 - PARTICIPATION IN TRADE

Paragraph 4 (a) - Proposed new text:

"Unless otherwise mutually agreed, the provisions of article 2, paragraphs 1 to 16 inclusive concern all cargoes carried by liner shipping, with the exception of military equipment for national defence and* government cargoes."

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* Government cargo is to be defined by the State concerned.

Article 4 - SANCTIONS

Paragraph 3 - Proposed new text:

"No expulsion or suspension shall become effective until a statement in writing of the reasons thereof has been given to the line concerned and the sponsoring authority and until any dispute has been settled as provided for in Chapter VI."

Article 6 - CONFERENCE AGREEMENTS

Proposed new text:

"All conference agreements, pooling, berthing and sailing rights agreements and amendments, comprehensive illustrative lists of practices regarded as malpractices and/or breaches of such agreements and other documents directly related to, and which affect such agreements shall be made available to the appropriate authorities of the countries whose trade is served by the conference and of the countries whose shipping lines are members of the conference."

Chapter III - RELATIONS WITH SHIPPERS

Article 9 - AVAILABILITY OF TARIFFS AND RELATED CONDITIONS AND/OR REGULATIONS

Proposed new text:

"Tariffs, related conditions, regulations and any amendments thereof shall be made available to shippers, shippers' organizations ..... covered by them."

Article 11 - CONSULTATION MACHINERY

Paragraph 1 - Proposed new text:

"There shall be, where applicable, at both ends of the trade, consultations on matters of common interest ..... they play a decision-making role."

Chapter IV - FREIGHT RATES

Article 14 - GENERAL FREIGHT RATE INCREASE

Paragraph 3 - Proposed new text:

"A conference, in an effort to expedite consultation shall, prior to such consultations, submit to the participating parties a report from independent accountants of repute including aggregated analysis of data regarding relevant costs and revenues which in the opinion of the conference justify an increase in the freight rates."

Paragraph 5 - Proposed new text:

"If no agreement is reached within 30 days of the notice in accordance with article 14, paragraph 1, the matter shall be submitted immediately to international mandatory conciliation in accordance with the provisions of Chapter VI. The recommendation of the conciliators ..... mentioned in the conciliators' recommendation."

Paragraph 6 - Proposed new text:

"Subject to the provisions of article 14, paragraph 9, a general freight rate increase cannot be implemented by a conference before the conciliators' recommendation to that effect. A conference shall furnish adequate and precise information when submitting request on general freight rate increase. In the event that the conference rejects the recommendation ..... shall be provided in the loyalty arrangement for this purpose."

Article 16 - SURCHARGES

Paragraph 4 - Proposal:

Replace "15 days" and "30 days" by "30 days" and "90 days" respectively.

Article 17 - CURRENCY CHANGES

Paragraphs 2 and 3 replace "15 days" by "30 days."

Part Two - Chapter VI

PROVISIONS AND MACHINERY FOR SETTLEMENT OF DISPUTES

B. INTERNATIONAL MANDATORY CONCILIATION

Article 29

Paragraph 2 - Proposed new text:

"In determining the place of conciliation proceedings, parties and conciliators shall take into account, inter alia, countries which are closely connected with the dispute, where applicable, at both ends of the trade, bearing in mind the country of the shipping line concerned and, especially when the dispute is related to cargo, the country where the cargo originates."